The Madras Law Journal

Vol. XXV] JULY, 1913. [Part III

INSURANCE POLICIES FOR THE BENEFIT OF WIFE AND CHILDREN.

The decision of the Full Bench in *Pokkunuri Balamba* v. *Kakareparti Krishnayya*[1] raises questions of some importance in Hindu Law. The questions that arose in this case were whether a life insurance policy effected by a Hindu husband and expressed to be for the benefit of his wife and children would come within the purview of S. 6 of the Married Women's Property Act III of 1874 or if not coming within such purview form part of the estate of wife and children and not of the husband (the assured in the case) under the Hindu Law. There was an earlier case (*The Oriental Government Security Life Assurance Ltd.* v. *Vanteddu Ammiraju*[2]) decided by *Benson* and *Sundara Aiyar* JJ. where their Lordships held that the Married Women's Property Act III of 1874 did not apply to Hindus and that apart from the Act there was no trust created in favor of wife and children. In that case not merely the policy was for the benefit of wife and children but the company also undertook to pay the amount to the trustee and in default of such trustee to the beneficiaries. The Full Bench in the recent case hold that S. 6 is applicable. The learned Chief Justice admits that by reason of S. 2 of the Act Ss. 4, 5, 7 and 9

under that head considers the applicability of S. 6 of the Married Women's Property Act and holds that it applies to the case before him being one in which the daughter of the assured claims an interest in the policy effected by him for the benefit of his wife and children. While he holds that S. 6 of the Act affects the rights and liabilities of the daughter though married who, it has been observed by the learned judge is not a married woman within the meaning of S. 2 he declines to deal with the question whether she acquires any interest and if so what interest under the policy.

In considering the question whether S. 6 of the Act applies we have only to consider the reasons assigned by the learned Chief Justice. His opinion seems to be first that unlike S. 10 of the English Statute of 1870 or S. 11 of the English Act of 1882 the Indian Act splits the subject matter contained in that section into two Ss. 5 and 6. S. 5 is concerned with an insurance effected by a married woman while S. 6 concerns itself with an insurance effected by a married man and that such splitting is consistent with an intention to make S. 6 applicable and S. 5 inapplicable to Hindus; secondly that S. 2 of the Indian Act only excludes its operation as regards 'married women', that such exclusion cannot operate as regards children, that the words 'married women' do not occur in S. 6 and that although the section is in the interests of wife and children its primary object is to enable a man to make provision for his wife and children by insuring his life for their benefit without executing a separate deed of trust. The learned Chief Justice observes: "The section enables a Hindu male to do something which but for the section he would not be able to do." With all deference, however, this is merely begging the question.

We are afraid the learned judges have not taken any note of the consequences which would follow upon the construction

heading does not apply to Hindus notwithstanding that the words "married woman do not occur in the section." The section speaks of the mutual relations of husband and wife and when we speak of the husband the wife, a married woman within the meaning of S. 2 is also necessarily referred to. S. 6 also speaks of husband and wife but it does not stop there; it speaks of children also. If the section had not dealt with children the learned judges would apparently have felt no difficulty in holding that the section does not apply to Hindus. Can the mere fact that the children are incidentally referred to in S. 6 make any difference? The primary object of the Act is to deal with married women and the mere fact that the issue of a marriage is also dealt with cannot affect the construction properly to be placed upon it. There is no reason to suppose that the Legislature by a side-wind intended to deal with persons who are governed by their own personal laws. If the section is intended to be for the benefit of wife and children as is admitted by the learned judges we must take it that by reason of S. 6 no rule of Hindu Law is affected by the operation of S. 2. We take it that the exemption to married woman necessarily takes with it the husband who is the married man. If the intention of the Legislature is to affect the rules of Hindu Law and the primary object of the Legislature is to enable a person to make provision for his wife and children and to modify the law relating to Insurance we fail to see why the section should be restricted to a married man. Again if the construction placed by the learned judges on S. 6 is correct it would follow that a policy of insurance effected by a husband who is a member of a joint Hindu family and expressed on the face of it to be for the benefit of his wife and children or any of them as the case may be will create a trust for the benefit of his wife or of his wife and children or any of them as the case may be notwithstanding the fact that the premiums may have been paid by the husband out of the joint family moneys or partly out of it or out of his own savings. That is interfering with the Hindu Law of joint family and to impute such an intention is really absurd especially when it is remembered that the Legislature in the Trusts Act II of 1882 was careful to state expressly that nothing contained in that Act affected the mutual relations of the members of an undivided family as determined by any customary or personal law. Again if the construction placed by the learned judges be correct and that therefore in the case of a Hindu a trust is created by S. 6 in favor of his wife or of his wife and children or any of them as the case may be a trust in favour of unborn children may be validly created although according to the

law as now administered that will be contrary to the Hindu Law as laid down in the *Tagore case*[1] Again, children may be males or females, if a female she may be married or unmarried. If a policy is effected by a Hindu father and the policy is effected to be for the benefit of his wife and the married daughter will S. 2 apply? A married daughter is a married woman within the meaning of S. 2 and the wife also being a married woman will come within its operation. The Chief Justice and Mr. Justice *Sankaran Nair* do not seem to consider this question; but Mr. Justice *Tyabji* seems to think that a married daughter will not be a married woman. He says the expression "married woman" cannot refer to any one other than the woman married to the assured. Where he gets this we can hardly see. We therefore think that the best way to construe S. 6 is that the Legislature had no intention to affect the rules of Hindu Law and that the section therefore has no application to the Hindus.

It does not follow, however, that no trust has been created under the Trusts Act or under the general Hindu Law and it has therefore to be considered what is the nature of a policy effected by a Hindu for the benefit of his wife or of his children or of his wife and children or any of them. Before we discuss this question we have to state that although Mr. Justice *Sankaran Nair* refers to this question the question in the form in which we have raised has not been referred to the Full Bench and so the Full Bench has not dealt with it. Before proceeding to consider the question under the Indian Law it is well to consider the relationship of husband and wife under English Law. The relationship of husband and wife is so entirely different under English Law that it is unsafe to rely upon English decisions. According to English law husband and wife are one person and the property held by the wife at the time of her marriage as well as property acquired during coverture became the husband's property. Gifts by the husband to wife were also void at law; See Halsbury's Laws of England Vol. XV Title 'Gifts' para 73 note (g) p. 399. Equity had to intervene and create separate property for the woman by its peculiar doctrine of trusts so that a gift by a husband to his wife is sometimes supported in equity as a declaration of trust. No such doctrine was at any time required under the Hindu Law notwithstanding the Hindu Law admits the theory that husband and wife are one person. The Hindu Law recognises the wife to hold property independently of her husband. A gift cannot therefore be void but can be given effect to without

1. (1872) 9 Beng. L. R. 377.

invoking to aid any doctrine of trust. In England statutes had to be passed for recognizing separate property in a married woman so that but for those provisions the wife can hold no separate property. It is otherwise however under the Hindu Law. Hence the fact that without S. 10 of the English Statute of 1870 or without S. 11 of the English Statute of 1882 no trust or gift can be recognised under the English Law has no force whatever in considering the matter under the Hindu Law. In *Cleaner* v. *Mutual Reserve Fund Life Association*[1] there is an observation of *Lord Esher* M. R. "that apart from the statute (Married Women's Property Act) no interest would have passed to the wife by reason of her being named merely in the policy" so that apart from the statute such a policy would not create any trust in favour of the wife. The above observation is relied upon by the learned judges in ***Oriental Government Security Life Assurance Ltd.*** v. *Vanteddu Ammiraju*[2] as applicable to a case arising under the Hindu Law. With all deference we should protest against this method of applying the English Law.

Where the insurance is made for the benefit of wife and children and the policy expressly declares that it is for the benefit of the wife and children of the insured the property in the same belongs to the wife and children under the Hindu Law and under any system of law which does not hold that the wife can have no property apart from the husband. No special words are necessary to create a trust under the Hindu Law. Under the Hindu Law no writing is necessary to create a trust or transfer of property. Illustration (*a*) to S. 6 of the Trusts Act shews that words such as the one pointed out will form a valid trust. But if the transaction amounts to a trust the question arises whether the provisions of Ss. 5 and 6 of the Trust Acts will apply. The Trusts Act applies to private trusts and S. 1 enacts that "nothing herein contained affects the rules of Mahomedan law as to *waqf* or the mutual relations of the members of an undivided family as determined by any customary or personal law or applies to public or private religious or charitable endowments * * *." According to this section the provisions of the Trusts Act do not affect the mutual relations of the *members of an undivided family* as determined by any customary or personal law. A father and son constitute a joint Hindu family and in such a case wives and other females will be members of the family under the Hindu Law. The Trusts Act does not say that the mutual relationship of the *co-parceners* is not affected so that we take

1. (1892) 1 Q. B. 147. 2. (1911) I. L. R. 35 M. 162 at 166.

it that the rules of Hindu Joint Family are not affected by the Trusts Act. A Hindu husband and wife without any issue and without the husband's brothers or other co-parceners can hardly be said to be the members of an undivided family although there is a potientiality of a joint family arising by birth of children. The Trusts Act only says that the mutual relations of the members of an undivided family are not affected by it. It is a question whether this has the effect of saving all the provisions of the Hindu Law of Joint Family so that it has to be considered whether a transaction between two members of a joint family amounting to a trust is to be governed by the Hindu Law or by the Trust Act.

S. 5 of the Trust Act enacts " no trust in relation to immoveable property is valid unless declared by a nontestamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee." Insurance amount or the right created under the Insurance policy is not a right created in immoveable property. The question is whether the right created is moveable property within themeaning of the 2nd paragraph of the section. There is no definition of the words "moveable property and immoveable property" in the Trusts Act. So far as one can gather the provisions of Ch. II presuppose some existing physical property and it is therefore a question whether choses in action or rights to recover moneys under insurance policies can be said to be properties within the meaning S. 5. However it may be said that in the absence of a definition in the Trusts Act we shall have to look to the provisions of the General Clauses Act. In 1882 the General Clauses Act applicable was Act I of 1868. S. 2 cl. 2 of that Act enacted (after defining immoveable property under clause 5) that unless there be something repugnant to the subject or context moveable property shall mean property of every description except immoveable property so that it may be taken that under S. 5 of the Trusts Act rights of action conferred by Insurance policies are moveable property and that a trust in relation thereto can only be effected either by a non-testamentary instrument signed by the author of the trust or by the trustee in writing registered or by the will of the author of the trust or unless the ownership of the property is transferred to the trustee. It has been held by the Bombay High Court in *Madanji Devchand* v. *Tribhowan Virchand*[1] following the obser-

1. (1911) 13 Bom. L. R. 1121.

vations of Lord Romilly in *Bridge* v. *Bridge*[1] that there is a class of cases which although amounting to trusts do not fall within S. 5. This class of cases is described as follows: "If the stock stood in the names of trustees, and the beneficial owner of it executed, in favor of a volunteer, an assignment of such stock, and if notice of that assignment were given to the trustees, who acknowledged the validity of it and acted upon it, they would thereupon, through the act of the beneficial owner, become the trustees for the volunteer, and equity would enforce the due performance of that trust in his favour." The learned judges of the Bombay High Court go on to explain that "the cases referred to in the above passage are not confined to cases of written assignments by the beneficial owner, for example, in *M' Fadden* v. *Jenkyns*[2] a verbal message to a debtor desiring him to hold the debt in trust for another, when the trust was accepted by the debtor and communicated to *cestui que trust* was held to create a trust binding upon the personal representatives of the creditor." So that whereas in this case the Insurance Company for the amount insured by the husband agree to hold the amount payable under the policy for the benefit of the wife and children there is at least a complete trust within the meaning of the above decision enforceable as against the husband or as against the Insurance Company if they have agreed to pay to the wife and children under the policy. Under such circumstances the handing over of the policy to the wife and children is a sufficient communication to the *cestui que trust* so as to entitle him to take advantage of the transaction. Again it has been held by *Chandavarkar* J. in *Bai Mahakure* v. *Bai Mangla*[3] that where a husband deposits money in his wife's name in his shop he constitutes himself a trustee and that S. 5 only applies where the trustee is some other than the author of the trust that where the person constituting the trust holds himself as trustee there is no transfer and that therefore there is no registration necessary under S. 5. In the case of moveable property if the ownership of the property is transferred to the trustee no writing and therefore no registration is necessary. Thus the provisions of the Trusts Act do not prevent Courts from giving effect to the transactions of the nature noticed in the Madras case under discussion.

A further question arises as to the nature of the transaction *viz.*, whether it amounts to a gift or a trust. In either case the intention to create a benefit is necessary. It

1. (1852) 16 Beav. 315, 322. 2. (1842) 1 Ph. 153,
3. (1911) I. L. R. 35 B. 403.

may be a mere benami transaction. In *Narayana* v. *Krishna*[1] a husband purchased Government Promissory notes in the name of his wife and the High Court held that the presumption was that he ntended the notes to become her property. This case has been followed in *Narasimha Ammal* v. *Srinivasa Raghava Aiyengar*[2] and in *Diwan Ran Bijai Bahadur Singh* v. *Indar Pal Singh*[3] and it has been now definitely settled by the Judicial Committee that when property stands in the name of a female member of a joint Hindu family there is no presumption that such property is the common property of the family. As observed by the learned judge *Sankaran Nair* J. " in the Madras Presidency at any rate, there is an increasing disposition to make provision for the benefit of a person's wife, children including daughters as against his joint family, to whom his property would survive at his death, or as against the male heirs." It is more common in this Presidency and we may add that this is so especially in the case of those new kinds of property which have become familiar to us by our contact with the West, *i.e.*, Government Promissory Notes, Shares in Companies, Insurance Policies etc. In the case of a Mahomedan husband and wife a similar intention was given effect to in *Ebrahim Bhai Rahim Bhai* v. *Ful Bai.*[4] Assuming that there was an intention to give the benefit the question is whether it is a transaction of gift or trust. Whether it is a gift or trust the right of ownership is conferred upon wife and children and they become entitled to the property. The question whether a particular transaction is a gift or a trust is a difficult one. Different judges have taken different views of the same transaction. In *Bhai Mahakore* v. *Bai Mangla*[5] *Chandavarkar* J. held the transaction to be a trust while the other judge *Heaton* J. held there was no trust and held that a right was conferred upon the wife for the money so deposited. Whether a transaction falls under a particular head depends upon the particular circumstances and a discussion of these will be too long for being included in this article.

NOTES OF INDIAN CASES.

Moosa Goolam Ariff *v.* Ebrahim Goolam Ariff.—I. L. R. 40 C. 1.—The Judicial Committee held in this case following the judgment of Lord Cairns in *Peet's case*[6] and of Lord Chelmsford in *Oakes* v. *Turquand*[7] that a certificate of registration (or incor-

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1. (1884) I. L. R. 8 M. 214.
2. (1909) I. L. R. 33 M. 112.
3. (1899) I. L. R. 26 C. 871, 872.
4. (1902) I. L. R. 26 B. 577.
5. (1911) I. L. R. 35 B. 403.
6. (1867) L. R. 2 Ch. 674.
7. (1867) L. R. 2 E. & I. Ap. 325.

poration) by the Registrar of joint stock companies is conclusive for all purposes and courts cannot go behind it to consider any alleged defect in the formation or constitution of a company. Their Lordships also point out that the language of S. 6 of the Indian Act apart from any English decisions plainly indicates that the statutory condition that the memorandum of association must be signed by seven persons is as much a condition of registration as any other requisition to be found in the Act which is preliminary to registration and apparently essential.

Kumed Bewa *v.* Prasanna Kumar Roy.—I. L. R. 40 C. 45.—The decision in this case that the omission to issue a notice under S. 248 of the old Code (O. XXI, r. 22) does not render a sale subsequently held void, can hardly be questioned though one cannot agree with all the reasoning adopted by the learned judges. If the case had come under the new Code, clause 2 of O. XXI r. 22 shows that the court is not bound to issue notice in all cases. We doubt whether the case is not one falling within the scope of O. XXI r. 90. Anyhow the object of issuing a notice is we take it to be; to see whether the decree debt is not discharged, or to give the judgment debtor time to discharge the debt. If execution is ordered without the issue of such notice we doubt whether the order directing execution can be set aside for want of notice if the judgment debtor does not offer to pay when he admits the decree debt has not been discharged. Anyhow after an order of attachment has been made if a judgment debtor has not chosen to pay or discharge his debt the order cannot be set aside for want of notice prior to attachment.

Sita Ahir *v.* Emperor.—I. L. R. 40 C. 168.—We think that the learned judges acted rightly in setting aside the conviction in this case on the ground that no charge was framed but we have doubts as to the construction placed by the learned judges upon Ss. 535 and 537 (*a*) Cr. P. C. We are afraid that the construction placed by the learned judges on S. 535 *viz.*, that it applied to a case where the offence being a petty one and the evidence being fairly taken, the Court framed no charge at all and not to a case where the Court has framed a charge, is far from satisfactory; but of course when the charge is of one offence and the person is acquitted of that offence and convicted of a totally different offence the conclusion of the learned judges that a failure of justice has been occasioned can hardly be gainsaid.

Prasanna Kumar Mookerjee *v.* Srikantha Rout.—I. L. R. 40 C. 173.—The learned Judges in this case held that in the case of a ghatwal the holder for the time being does not claim through the preceding holder and that therefore adverse possession under art. 144 affecting the predecessor cannot affect the present holder. Reliance is placed upon S. 2 of the Limitation Act and the decision of the Judicial Committee in *Ramachunder Singh* v. *Madho Kumari*[1]. The Privy council case referred to does not, however, support the contention. In that case there was no adverse possession against the predecessor and adverse possession was expressly stated to have commenced only at a time when the present holder entered office. The Privy Council held that under art. 144 possession became adverse from that date and starting from that date there was no adverse possession. The question therefore has to be considered upon general principles and that is whether a person who is the holder for the time being can represent the estate for purposes of limitation. If the estate is not one for life the Privy Council has held in *Gnana Sambanda* v. *Velu Pandaram*[2] that possession adverse against the holder for the time being will be adverse to the successors also. That principle will have no application when according to law there is a series of successive life estates and possession can become adverse *prima facie* against the holder for the time being only and not against others unless there is a general principle of law that the life estate holder represents his successors also for purposes of limitation, etc. The Limitation Act however does not contain any such general principle On the contrary article 140 of the Limitation Act seems to show that the successor will have 12 years to recover possession of immoveable property from the time the estate falls into possession. The position of mutt holder seems to fall under this category. See *Vidyapurna* v. *Vidya Nidhi*[3]. Apparently this case is authority for the view that the position of ghatwals is similar.

Raj Krishna Dey *v.* Bipin Behari Dey.—I. L. R. 40 C. 251.—We have been repeatedly pointing out the inconsistency of the reasoning adopted by the judges of the Calcutta and Allahabad High Courts in laying down the principle applicable in a case of default of nomination by the holder or the last trustee. In this case the learned judges following *Sital Das* v. *Pratap Chunder*[4] lay down three principles. The first two seem to

1. (1885) I. L. R. 12 C. 484 : L. R. 12 I. A. 188.
2. (1899) I. L. R. 22 M. 271.
3. (1904) I. L. R. 27 M. 435.
4. (1909) 11 C. L. J. 2.

be unquestionable. The third principle laid down is this: "Where a *Shebait* appointed by the founder fails to nominate a successor in accordance with the condition or usage of the endowment, the management reverts to the representatives of the founder, even though the endowment has assumed a public character." If the correct principle is that the right of management reverts to the representatives of the founder it is difficult to reconcile it with what is said by the learned judges immediately below. The learned judges say: "In the case before us, therefore, upon the death of the original *Shebait* it became incumbent upon the representatives of the founders to make an appointment to the office of Shebait." If the right of management reverts to the founder's representative why should they make an appointment because the right of appointment is a distinct thing from the right of management itself. It is also difficult to appreciate the principle enunciated in this case that where a right of appointment is vested in a number of persons all of them must be unanimous in making the appointment and that an appointment by the majority is invalid. If according to the instrument of the founder a unanimous resolution is required that is a different question but here is a case of no instrument of foundation. The principle applicable to a public trust is that a majority may appoint. We fail to see why the above principle should not hold good in the case of the exercise of a right of appoint nent.

Bhima Rout v. Dasarathi Dass.—I. L. R. 40 C. 323.—We are surprised at the conclusion arrived at by the learned judges in this case. Even taking the view that the members of a new committee would not be proper parties their decision that S. 14 does not apply to a suit to remove a trustee under S. 3 is untenable, unsound and opposed to all the authorities. The learned judges say: "The Legislature could not have intended, that where there is a Committee which controls the trustee, manager or superintendent, a suit may be instituted not merely against the Committee, but independently of the Committee against the trustee, manager, or superintendent for his removal. The intention of the Legislature must have been to regulate and control the management of the endowment through the Committee. If the members of the Committee tolerated an unsuitable person as trustee, manager or superintendent, such conduct on their part would amount to neglect of duty and would make them amenable to the jurisdiction of the Court. In the present case, therefore, the suit could not have been instituted against the second defendant

alone." See however *Sital Das* v. *Pratap Chunder* [1], *Agri Sherma Embrandari* v. *Vishnu* [2], *Ponnambala Mudaliar* v. *Varaguna Rama. Pandia Chinnathambiar* [3], *Shanmugam Pillai* v. *Sankaremurti* [4]. In fact in many of the cases the contention was that that section refers to institutions falling under S. 3 and not to institutions falling under S. 4 so that there was no doubt felt as to the applicability of the former section to such cases. The learned judges do not refer to any of these cases nor to the language of S. 14 but to some supposed policy of the Legislature. The fact that the delinquent trustee would be amenable to the jurisdiction of the committee and the fact that the Committee itself would be guilty of breach of trust for neglecting to remove such delinquent trustee would not affect the jurisdiction of the Court to remove such delinquent trustee which jurisdiction the Court undoubtedly possessed before Act XX of 1863.

Subbayyar v. Moniem Subramania Aiyar. — I. L. R. 36 M. 8.—The learned judges in this case referred to some American authority for the position that when a grant of property is made on the consideration or condition that the grantee should maintain the grantor, the failure of the grantee to fulfil the condition entitles the grantor to avoid the grant, but they refused to follow the same as according to the learned judges the American decisions laid down a special equity which should not be imported into this country. The learned judges have not been referred to any Indian authority and in fact they say there is no Indian case. The principle laid down in the American decisions is to be found in the Hindu Law Texts and there are also earlier decisions upholding that principle. A passage in Narada dealing with the resumption of gifts supports this principle. As instances of invalid gifts he refers to a gift in expectation of a reward i.e., in respect of some service to be performed by the donee. Narada Ch. IV § 10 Sacred Books of the East Vol. XXXIII p. 130. See also Manu Ch VIII § 212, and various other texts to the same effect. The commentators and Digest writers equally recognise it. Colebrook's Digest vol. I, Macnaughten's Precedents case No. 15 at pp.. 222,223 and case No. 29 at p. 237 fully support this principle. We regret that the texts and authorities of Hindu Law have not been brought to the notice of the learned Judges. There is no special equity laid down in American Courts as peculiar to that country

1. (1909) 11 C. L. J. 2.
2. (1865) 3 M. H. C. 198.
3. (1872) 7 M. H. C. 117.
4. (1899) 10 M. L. J. 109.

although there may be no English cases exactly on the lines of the American authorities.

Sri Maharajah of Vizianagaram *v.* Veeranna, I. L. R. 36 M. 18.—We can hardly understand the headnote in this case. The objection taken was that the suit was of a small cause nature and that no second appeal lay. The appellant replied that the suit fell under Article 13 whch exempted or excepted certain suits from being cognizable by Small Cause Courts. The objection prevailed and the suit was held to be of a small cause nature. The learned judge held that a suit by the *Za*mindar to recover from the Inamdar the land cess was a suit of a small cause nature and did not fall under article 13. Apparently that is what was meant by the reporter in the head note.

Danakoti Ammal *v.* Balasundara Mudaliar, I. L. R. 36 M. 19. We think the learned Judges applied the correct principle in this case. Where a person has only a qualified authority and the validity of his or her acts depends upon the consent given by a third person such consent must have been given and obtained boná fide. Innumerable cases have established this principle. In the case of a widow making an adoption with the consent of the sapinda the validity of the transaction itself will depend upon the consent being bonafide. It is different in a case where the adoption is made by a full owner whose act does not depend upon the consent of a third person. In the case in I. L. R. 29 M. 160 apart from the distinction drawn by the learned Judges already referred to, it was the person who gave the child in adoption that received the money. That, however, is an immateiral circumstance so far as the question of adoption is concerned. It is by the act of receiving that a status is created and we have to look at it from the stand point of the person who makes the adoption. Of course if under the law the person giving in adoption is under any disability that is a different question. It is not necessary to consider whether the explanation of the learned Judges of the decision in I. L. R. 30 M. 450 is correct and whether it is really distinguishable from the case reported in 11 M. L. J. 20 or not.

R. P. Chelamanna *v.* R. P. Rama Rao. I. L. R. 36 M. 46. —We regret that the decision in this case can hardly be regarded

as an authority on the decision of the questions of law raised in this case or as settling the law in question. There is an obvious fallacy in the reasoning of the learned Judges and we are surprised at the learned Judges falling into this fallacy especially when they are dissenting from a previous Judgment of this court which also dealt with this question *viz.*, *Natesa Chetti* v. *Vengu Nachiar*[1]. It may be remembered that in the previous case one of the learned Judges argued as counsel for the position now taken in the case under notice but it was, after an elaborate argument, overruled. That being so, one would have expected the learned Judges to have threshed out the question in all its aspects. We are bound to say with regard to the present judgment that it is by no means convincing nor can it be said to be a well-considered one. The learned Judges in dissenting from the previous case rely upon S. 49 of the Registration Act. We are afraid that it is begging the whole question. The learned Judges admit that one of the consequences created by the section is taken away. Apparently we take it that the learned judges intend to mean that that consequence is taken away by the other section. That apparently is the trend of their remarks as to the effect of the decisions of the Judicial Committee. That is how the learned Judges think that the remarks of the Judicial Committee can be supported. It needs hardly be stated that the the Judicial Committee say nothing of that sort and we cannot understand how their language can be plainer when they say in *Bindesri Naik* v. *Ganga Saharan Sahu*[2]. "They are satisfied that the provisions of S. 17 of the Act do not apply to proper Judical proceedings whether consisting of pleadings filed by the parties or of orders made by the Court." That being so S. 49 can have effect only in cases where a document falls under S. 17. The section begins by stating that no document required by S. 17 shall have the consequences stated in the section if the requirements of S. 17 have not been complied with. The Judicial Committee holding that decrees and orders of the Court do not come under S. 17 the consequences of S. 49 cannot follow if those pleadings and decrees and orders are not registered. That being so the learned Judges in I. L. R. 33 M. 102 are perfectly justified in their Judgment. It is not necessary to consider whether the term pleadings should be restricted in any way in order that such pleadings may be taken out of the category of S 17 or out of the effect of the consequences stated in S. 49. That is a comprehensive question which cannot be answered within the limits of a note. It

1. (1909) I.L.R. 33 M. 102. 2. (1897) I.L.R. 20 A. 171 at 180 (P.C.)

may be noticed that the learned Judges are inaccurate in stating that the decision of the Allahabad High Court. (I. L. R. 28 A. 71) has not been followed in later cases. The two cases cited by. the learned Judges with regard to this view really do not support them. In the case in I.L. R.31 A. 13 there were only mutation proceedings before the Revenue authorities and the Allahabad High Court in that case held that the rule laid down in the decisions of the Judicial Committee did not apply. In the case in I. L. R. 32 A. 206 the decision in I. L. R. 28 A. was not referred to at all. Assuming therefore that a document is taken out of S. 17 of the Registration Act by reason of its falling within the principle laid down by the Judicial Committee as to which there is some conflict of opinion we must say that such a document cannot have the effect of drawing the consequences imposed under S. 49 by reason of that section. We hope to refer to this matter later on.

Devaraju v. Mahomed Jaffer Saheb, I. L. R. 36 M. 53 Although the Reporter's headnote in this case seems to take the decision as laying down a general proposition on the question of estoppel the learned Judges in this case lay it down only as applicable to the particular circumstances of the case. A person who is a *defacto* Dharmakarta sued a tenant on the basis of a rent deed executed by him for six years. During the period the rightful Dharmakarta had sued him and the defendant for possession and got a decree which declared him and not the person getting the rent deed as a rightful Dharmakarta. Here there was no question of estoppel under S. 116. It was only a question of estoppel by *res judicata* but apparently the point argued before the learned Judges was only an estoppel under S. 116. The person adjudged to be the rightful Dharmakarta had not executed the decree for possession but had accepted certain money payments from the person in wrongful possession in discharge of his claim for mesne profits. The present suit was by the person in whose favour the rent deed was executed against the tenant for recovery of rent. There is no plea of discharge to the rightful Dharmakarta; at any rate such a discharge was found against. Under the circumstances the learned Judges held that the tenant is liable for the rent.

SUMMARY OF ENGLISH CASES.

Hickman & Co.,: v. Roberts [1913] A. C. 229 (E.). and Bristol Corporation v. John Aird & Co.,: [1913] A. C. 241 (E.).

Building contract—Arbitration clause—Arbitrator siding with or influenced by one of the parties or necessary witness of matters in issue—Unfitness to arbitrate—Other party not bound by arbitration clause—Right of suit, even before final issue of certificate.

An engineer or architect paid by a building owner but appointed as arbitrator or referee to decide various matters of difference that may arise until the completion of the building contract, between him and the building contractor must, being an arbitrator, preserve that judicial independence which is required of him so as to do even justice between the parties. If he either sides with or is in a position to be influenced by the building owner or so conducts himself or becomes placed under circumstances that he is obliged to be at once a witness and a judge of facts in issue between the parties he is no longer fit to arbitrate; and the strict rule of law that parties must abide by the terms of their contract to refer to arbitration will not be applicable in such a case which if applied will certainly work to the manifest injustice of the contractor, who is under such circumstances entitled to be relieved of the necessity to submit to arbitration and bring his case to the adjudication of the ordinary tribunals of the land. The contractor is then entitled to file a suit for what is due to him under the contract even without the final certificate of the engineer improperly withheld, which is neither a condition precedent to the institution of the action nor conclusive as to the amount due to the contractor.

Rickards v. Lothian [1913] A. C. 263. (J. C.)

Action for Negligence—Immediate cause, the mischievous act of a third party—Taking of reasonable precautions—Damage by overflow of stored water.

The rule of liability enunciated by *Rylands* v. *Fletcher*[1] will not be applicable to a case where stored water which was safely guarded against leakage is made to escape by an unforeseen mischievous act of a third party over whom the defendant had no

1. (1868) L. R. 3 H. L. 330.

control and whom the defendant did not instigate or where the storage of the water which was safely kept was for ordinary or natural purposes connected with the use of the land.

Kilmer v. British Columbia Orchard Lands Limited.,
[1913] A. C. 319. (J. C.)

Liquidated damages or penalty—Contract to buy land by payment in instalments on specified dates—Forfeiture clause in respect of paid instalments in case of non-payment of any one instalment—Time agreed to be essence of contract—Unenforceability of the forfeiture clause.

In cases of contracts to buy lands by payment of the price in instalments or on specified dates though time may have been agreed to be of the essence of the contract, a clause of forfeiture of the whole agreement and of all the amounts till then paid, in case of failure to pay any one instalment on due date is certainly a penalty and will be relieved against by Courts of Equity.

In re Dagenham (Thames) Dock Co., Exparte Hulse[1] followed.

Per curiam. The penalty, if enforced according to the letter of the agreement becomes more and more severe as the agreement approaches completion and the money liable to confiscation becomes larger.

In re **General Motor Car Co., Limited:** [1913] 1 Ch. 377. (C.A.)

Companies Act. S. 120—"Compromise or arrangement"—A sale to a new company to be formed.

A sale of the assets and undertaking of a company to a new company to be formed for the purpose with a provision for the creditors being taken over by the new company but no provision for preserving the rights of the dissentients cannot be said to be a compromise or arrangement within the meaning of S. 120 of the Companies Clauses Consolidation Act.

The judgment of *Neville* J. reversed.

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1. (1873) L. R. 8 Ch. 1022.

In re **Woodward : Kenway** *v.* **Kidd** [1913] 1 Ch. 392.

Evidence—Registers of births and kept by Society of Friends—Admissibility of, at Common Law—Non-parochial Registers Act, 1840—Entries, how provable—Not by extracts from digest.

Registers of births, marriages &c., kept by the Society of Friends prior to July 1, 1837 when the Births and Deaths Registration Act came into force were not evidence at common law. Under the non-parochial Registration Act, 1840 these registers when deposited at the Somerset House became statutory evidence but entries therein were provable only by the registers themselves or by a certificate under seal of the general Register office. So long as the registers are in existence extracts from a digested copy of these registers are inadmissible.

In re **Birkbeck Permanent Benefit Building Society** [1913] 1 Ch. 400.

Pension—Voluntary—Not claimable on winding up—Ultra-vires business—Clerks connected therewith—Contract not enforceable.

A clerk under a building society was asked to retire and out of consideration for his past services, the board allowed him a pension. The society after a time was ordered to be wound up. The clerk claimed the capitalised value of his pension but his claim was rejected on the ground that it was only a voluntary allowance. Another clerk who was doing banking work of the society was similarly being given pension. The banking branch of the business being considered ultra vires, it was held that the claim of the clerk connected with that branch of business was inadmissible irrespective of the fact whether his allowance was voluntary or under a contract.

In re **Fane: Fane** *v.* **Fane** [1913] 1 Ch. 404.

Devise—To the uses of another settlement at the death of the testator's wife—Good if as a fact, rule as to perpetuities not infringed—Analogy to powers.

A testator gave his estate to his wife for life and on her death to such uses as should at the time of the death of his wife be subsisting and capable of taking effect concerning another estate.

Justice Eve held that the limitation over was bad as taking the limitations as regards the other estate it was possible that the rule against perpetuities might have been offended though the disposition did not as a fact offend the rule. The court of appeal held that the rule applicable to the case is the rule analogous to that applicable to powers and the limitation over is good, if as a matter of fact it does not offend the rule, though in other events it might offended.

Thornhill v. Weeks: [1913] 1 Ch. 438.

Declaration—Cause of action for—District Council—Assertion of right.

An action for declaration and injunction will lie against the District Council whose duty it is to protect public right of way who threaten and intend to exercise that right by their servants and agents. Where parties claim to have a right to do a thing, even though they say they have no present intention of doing it, they are proper parties to a bill for a declaration of right and for an injunction. If the defendant claims and insists on the right to do a thing, although he has not already done *modo et forma* as alleged he would be a proper party to the suit and an injunction may be granted against him. Where a person claims a right that is a ground for making him a party to an action for injunction.

The King v. Edwards: [1913] I. K. B. 287.

Criminal Law—Indictment—Larceny—Joinder of several charges against different defendants bad.

The joinder in one trial of a count of larceny against one defendant with a count for another larceny against the same person and another jointly is bad in law.

Reversion Fund and Insurance Co., Limited v. Maison Cosway Ltd.,: [1913] I, K. B. 364. (C. A.)

Principal and agent—Borrowing money by managing director on behalf of Company—No authority to borrow—Liabilities of Company discharged by money borrowed—Knowledge of lender of absence of authority to borrow—Right to recover—Equity.

The Manager of the defendant company had no authority to borrow except in so far as he might be authorised to do by the company. He borrowed money from the plaintiff company on behalf of the defendant company without authority and applied the

same in discharging existing liabilities of the company. The plaintiff company was aware of the absence of authority of the Managing Director at the time money was advanced. *Held*: By *Buckley* L. J. and *Kennedy* L. J. *Vanghan William* L.J. dissenting that the plaintiff company was entitled to recover the amount advanced notwithstanding the knowledge of the absence of authority to borrow on the part of the manager.

Latham *vs.* **Johnson & Nephew Ltd.,**: [1913] I. K. B. 398.

Negligence—owner of unfenced waste land—Leave and License to enter for public—Children—Allurement, invitation or trap—Dangerous objects—Injury—Liability.

In this case the plainfiff is an infant aged about two. The defendant is the owner of an unfenced waste land adjoining a path leading to the house in which the infant's parents lived. The land did not adjoin any high way. The public adults and infants alike were allowed to pass and repass over it and to run about and play on it. The defendant had stored a heap of paving stones. The plaintiff strayed alone into the land and was there found sitting on a large stone with another on her hand three fingers of which were badly injured. In an action for negligence the jury found that children played on the land with the knowledge and implied permission of the defendants and that there was no invitation to plaintiff to go upon the land and that the defendant ought to have known that children might be injured by the stones and that they did not take reasonable care. On this finding judgment was given in favour of the plaintiff aud damages awarded. On appeal held that the defendants were not liable as there was no invitation trap or allurement or any dangerous object on the land.

Roberts *v.* **Gray** : [1913] I. K. B. 520 (C. A.)

Infant—Contract for necessaries—Benefit—Consideration—Received—Executory contract—Damages—Liability.

A contract by an infant for necessaries is binding on him and cannot be repudiated on the ground that it is executory.

In this case a contract was entered into between an experienced billiard player and an infant of great promise to go on a tour as a professional billiard player and the contract was held to be for necessaries and for his benefit. After it had been in operation for a some time the infant repudiated the contract. Held

that the whole contract was binding on him and that he could not repudiate any part of it.

Orient Company Ltd., v. Brekke and Howlid : [1913] I. K. B. 531.

Sale of goods—I. F. E. Contract—Delivery—Safe arrival of goods at port of destination—Goods not insured—Obligation of buyer to accept.

Under a C.I.F. Contract an essential condition of delivery is that a policy of insurance of the goods shipped must be included among the shipping documents tendered to the buyer. It is not sufficient if the goods have arrived at their destination and the buyer is not bound to accept and pay for the same.

In this case under a C. I. F. contract goods were shipped by plaintiffs. They sent to defendants a bill of lading and an invoice only and as no insurance was effected there was no policy to be given. The goods arrived safely but the defendants refused to accept. *Held* in an action for the price of goods that the defendants were not bound to pay.

Clydesdale Bank Ltd., v. Schroder & Co.,: [1913] II K. B. p. I.

Money paid under compulsion of law—Legal process in a foreign country—Action to recover.

The plaintiffs were mortgagees of a ship and on the ship's arrival at a foreign port took possession as mortgagees. The defendants were entitled to a lien on the ship and freight by virtue of a document in connection with some advances. The defendants instituted legal proceedings in the foreign court for the detention of the ship. The plaintiff paid the money due to them under protest and brought a suit in England to recover the money. *Held* they were not entitled to recover on the ground that the money paid under legal process cannot be recovered back.

Morpeth Rural District Council v. Bullock Hall Colliery Company Limited. [1913] II. K. B. 7. (C. A.)

Practice—Interrogatories—Highway—Extraordinary traffic—Damages—Action to recover extraordinary expenses—Particulars of average expenses of neighbouring highways—Particulars of—Highway damaged.

Plaintiff, the highway authority for the district concerned, sued the defendants who owned a colliery in the neighbourhood to recover the expenses incurred by them in repairing the highway which they alleged was damaged by extraordinary traffic. The plaintiffs were ordered to give the best particulars of the average expense for the past five years of similar highways in the neighbourhood regarding the cost of labour, materials and establishment charges. But the court refused to order the plaintiff to deliver particulars of the average expense for 5 years of the highway concerned as they were particulars of matters of defence.

The King *v.* Palmer: [1913] II. K. B. 29. (C. A.)

Homicide—Murder or man slaughter provocation—accused and deceased only engaged to be married—Confession of immorality.

A confession of immorality by a woman who was not the wife of the prisoner but engaged to be married to him will not if he kills her be such provocatien as will entitle the jury to find a verdict of manslaughter instead of murder.

King and Duneen *In re*: [1913] II. K. B. 32.

Arbitration—Particular question submitted to arbitration—Award—Error in point of law—Setting aside.

If a specific question is submitted to an arbitrator for his decision and he does decide it, the fact that the decision is erroneous on a point of law does not make the award bad in law.

JOTTINGS AND CUTTINGS.

The Attorney-General.— The demonstration of confidence and esteem offered to Sir Rufus Isaacs by the City Liberal Club this week was not confined to members of his political party, and the legal profession generally will welcome the significant utterance of the Chairman (Earl Beauchamp), who, after referring to the Attorney-General's great achievements as a statesman as well as an advocate, said: ' We look forward to the time when his brilliant abilities and the high integrity of his character will have placed him in a position where he will have even greater authority and influence. The claim which Sir Rufus Isaacs himself made that there is no act which he has committed, nothing which he has done, which could lead to the forfeiting of any part of the esteem and confidence of

his political friends will certainly be recognised by all his fellows at the Bar, irrespective of party, for there is nothing in the political developments of the inquiry which has elicited these emphatic statements that can affect his professional advancement.—*The Law Journal.*

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The Appellate Jurisdiction Bill.—If the Appellate Jurisdiction Bill which Lord Haldane has introduced into the House of Commons is less satisfactory than the measure bearing the same title which he brought in over eighteen months ago, it is a great improvement upon the Bill similarly named which the Attorney-General introduced into the House of Comons last year. Under the Bill introduced by Lord Haldane in 1911, which was framed to carry out the recommendations of the Imperial Conference, the House of Lords and the Judicial Committee were to be amalgamated into one great Imperial Court of Appeal sitting in two divisions, and the combined Courts were to be strengthened by the appointment of two additional Lords of Appeal in Ordinary. This Bill, though it passed the House of Lords, failed to make any progress in the Lower Chamber, and a very attenuated edition of it was introduced by the Attorney-General in 1912, but, so slow are the legislative wheels where law reform is concerned, even for this smaller scheme no time was found. For the union of the two Courts the Attorney-General's Bill made no provision. It merely provided that two additional Lords of Appeal should be appointed. Nor does the measure now introduced by Lord Haldane provide for the amalgamation of the two tribunals. The proposed increase in the number of Law Lords is only, according to a memorandum published with the Bill, the 'first step' towards carrying out the resolution of the Imperial Conference in favour of the fusion of the two Courts. But the present Bill is free from one defect that marred both its predecessors. The proposal to appoint two additional Lords of Appeal was originally accompanied by the parsimonious provision that the salaries of all Lords of Appeal appointed in the future should be 5,000*l.*, instead of, 6,000*l.* The provision, which was condemned by the Bar Council as 'tending to detract from that high dignity and consideration which should attach to membership of the Supreme Appellate Tribunal of the British Empire,' no longer finds a place in the measure. There is, too, another useful provision in the Lord Chancellor's new Bill which was not in that of last session. The maximum number of Colonial judges who may become members of the Judicial Committee by reason of the Judicial Committee Amendment Act, 1895, is to be increased from five to seven. Recent events have shown that

there is urgent need for making the Imperial Court of Appeal more representative of the Empire, and this provision will do something to satisfy it. Still more satisfactorily will it be met if one of the new Lordships of Appeal is given to a Colonial lawyer of acknowledged eminence.—*Ibid.*

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Emergency Judges.—More domestic in its interest is the provision in Lord Haldane's bill empowering Lords of Appeal in Ordinary to sit in the Court of Appeal. Every ex-Lord Chancellor is, like the Lord Chief Justice and the President of the Probate, Divorce and Admiralty Division, an *ex officio* member of the Court. Every puisne judge, too, is qualified to give the Lords Justices a helping hand when the condition of its business requires it. That no Lord of Appeal should be free to sit in the Appeal Court is obviously an anomaly which calls for removal. Mr. Justice Bray, withdrawn from his ordinary duties as a King's Bench Judge, is temporarily filling Lord Justice Farwell's place in the Court of Appeal, with the result that the work of the King's Bench Division is getting more seriously into arrear than ever. The assistance of a Law Lord in the Court of Appeal where arrears are almost as plentiful as in the King's Bench Courts, would be of special value at the present time. No judicial staff can be so large that illness will not sometimes lead to a dislocation of the business of the Courts, and the principle of judicial assistance might well be extended in other directions. With the suggestion that Commissioners should be appointed to serve in the Royal Courts of Justice as well as on circuit we are not in sympathy. It is, for obvious reasons, undesirable to encourage a system under which eminent counsel are on the Bench one day and off it the next. There are, however, two ways in which on emergency the High Court might be assisted to which, so far as we can see, no reasonable objection can be taken. The Lord Chancellor might be empowered to request a County Court judge to sit temporarily in the High Court or an ex-High Court judge to resume for a while his place on the Bench. Lord Loreburn, while he occupied the woolsack, was desirous of appointing Lord Gorell a Commissioner of Assize, but his authority to make the appointment was questioned and the experiment was not made. Is it not anomalous that ex-High Court Judges like Lord Gorell and Lord Mersey, while competent to sit in the highest tribunal in the land, should be unable to give a helping hand in the Courts in which they won their judicial fame ?—*Ibid*

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LAW OFFICERS' SALARIES AND FEES.

Mr. Masterman, in reply to Mr. Ginnell, stated that the salaries of the English and Irish Law Officers, as shown in the annual estimates, and the fees as shown in the appropiation accounts 1911-12 are as follows :—

England.							
Attorney-General	...	Salary	£7,000	Fees	£6,321	17	5
Solicitor-General	...	,,	£6,000	,,	£4,247	6	0
Ireland.							
Attorney-General	...	,,	£5,000	,,	£646	16	0
Solicitor-General	...	,,	£2,000	,,	£405	6	0

Mr. Masterman added that the total amount of the fees for 1912-13 was not yet available.—*Ibid.*

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SIR FREDERICK POLLOCK contributed a paper on 'The Transformation of Equity' to the Legal Section of the Historical Congress, which met in the Old Hall of Lincoln's Inn, Sir Frederick Pollock said that the current use of 'equity' and similar terms disguised the fact that there were two quite different ways of moderating the strict application or limitation of legal rules. The archaic method was to exercise an undefined power of dispensing with rules: this was not judicial at all. The modern method was to develop and qualify the rules themselves, by free rational interpretation: this was an operation of scientific law. Early English equitable jurisdiction was of the 'dispensing' kind, the dispensation being from the requirements of the regular procedure rather than from substantive rules. Under James I., the jurisdiction had become regular, and the Court of Chancery prevailed in the well known conflict with Coke, expressly on the ground that it was an ordinary Court of Justice. But fear of political bias in the Chancellor, who was specially the King's officer, roused a new suspicion among the Puritans and the Parliament men. This dislike and suspicion might be traced beyond the Atlantic in the judicial institutions of the American colonies, before the War of Independence, where the provision for equitable jurisdiction was very imperfect. From the eighteenth century onwards, all English Courts had claimed and exercised the power of applying equity, in the larger sense, to legal interpretation. On the other hand, Courts of Equity had equally disclaimed any power to dispense with legal rules or administer natural justice. Dr. W. S. Holdsworth, Reader in English Law in the University of Oxford, read a paper on 'The Influence of Coke

on the Development of English Law,' in which he pointed out that the age of Coke was a critical time for the Common Law. In the seventeenth century many new courts administering law outside the Common Law had arisen, and by their help England had become a territorial State of the modern type. Would the Common Law maintain its supremacy ? Coke, by his career and writings, did more than any other single man to answer this question in favour of the Common Law. The chief facts in Coke's career were its apparent inconsistency. His writings made the influence of his career permanent, and the two literary works which had this effect were the Reports and the Institutes.—*Ibid.*

* * *

The Late Professor Westlake.—England has lost by the death of Professer Westlake the most distinguished of her jurists. Other writers on international law remain who excelled him perhaps, in attractiveness of style, but none who have equalled him in the depth and range of his learning or in the practical service he rendered the cause of peace. His many contributions to the literature of jurisprudence covered more than half a century; the first edition of his famous treatise on 'Private International Law' was published in 1858, and the fifth edition appeared only last year. His works gave him a world-wide reputation, and his death will be deplored by lawyers abroad to whom the names of even our distinguished judges are unknown. He was something far more than a mere bookman. His profound knowledge, his acute analytical power, his sagacious judgment, and his remarkable power of lucid statement found expression not only in his books and lectures—they were given freelly to the movements towards that international amity from which the study of international law derives its inspiring interest. He had the instincts of the statesman as well as the learning of the jurist. It was Professor Westlake who suggested the ultimate solution of the difficulties that arose in 1896 between England and the United States in regard to the boundary between Venezuela and British Guiana. As one of the founders of the Institute of International Law, no less than as one of the British members of the International Court of Arbitration at the Hague, he put his great store of learning to practical use, and made a real, if unostentatious, contribution to the welfare of mankind.Some may be inclined to believe, amid the disturbing, talk of increasing armaments, that labours such as Westlake's have been in vain. To hold so pessimistic a belief is to take too narrow a view. The cause of international arbitration, assisted by the study of international law, has, notwithstanding some hostile tendencies,

made great and permanent progress in recent years, and English lawyers have reason to be proud that so earnest and learned a man as Westlake should have come from their ranks to give it such distinguished aid.—*Ibid.*

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The Theatre Queue.—Last week Mr. Justice Joyce delivered his reserved judgment in *Lyons, Son and Co.* v. *Gulliver*—the Palladium queue case. The plaintiffs carried on business as lace merchants three doors from the Palladium, and conceived that they were injured by the formation of a queue of people at the music-hall doors three times a day. An action was, therefore, brought against the manager and proprietors of the Palladium for an injunction to restrain them from allowing the formation of a queue so as to cause an obstruction to the entrance of the plaintiffs' premises. The judge found on the evidence that the queue did actually obstruct persons who desired to enter the plaintiffs' premises, and did actually deter their customers to some extent from going in. It was, therefore, held that, as the crowd only collected in front of the Palladium door because the doors were not opened sufficiently early, the defendants were responsible for the presence of the queue in the street and the nuisance which it caused. Technically, the defendants has used the highway in such a manner as to cause a public nuisance and an injury to the plaintiffs. As the defendants undertook to open the doors earlier in future, the injunction asked for was not, in fact, granted, but the legal liability of the defendants was formally recorded by an order being made against them to pay 20s. damages and the costs of the action, with liberty to restore the action if the undertaking were not observed. There is an impression abroad, judging by statements in the daily Press, that this decision of Mr. Justice Joyce is the death-knell of the theatre queue. This is far from being the case. The decision lays down a principle, or rather states a familiar principle, which is strictly limited in its application by the facts of the case. The central feature in the proceedings was that the queue was the direct effect of a cause which was under the sole control of the defendants—the late opening of the doors. It by no means follows from *Lyons, Son and Co.* v. *Gulliver* that every theatre or music-hall queue can be treated as a public nuisance inflicting injury on private person. The proprietors of a theatre could not be held responsible, or liable to an action, for the formation of a queue which the management were unable to keep down by their utmost efforts in the way of opening doors early and affording all reasonable facilities for ingress to the theatre—*Ibid.*

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The Late Lord Gorell.—By the death of Lord Gorell, at the comparatively early age of sixty-four, the legal world has lost one of its most distinguished and popular men. Few judges have ever won in larger measure the confidence and esteem of the public and the profession. The varied work of the Probate, Divorce and Admiralty Division requires a peculiar combination of judicial gifts, and Lord Gorell, who resigned the office of President little more than four years ago, possessed the requisite qualities in an eminent degree. He had a keen entellect that never leaned to technicality, a dignity and courtesy that no untoward incident could disturb, and a readiness to listen that was all the more noteworthy because of his own economy in words. The premature close of so distinguished and useful a life is deeply to be regretted, but the recollection of the service he gave so ungrudingly to the public, as well as of the strong personality that impressed all who knew him, will long remain-*Ibid.*

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A Great Law Reformer.—Lord Gorrell's judicial services did not cease when he resigned the Presidency of the Division in which he worked with such conspicuous success for seventeen years. He freely gave the country the benefit of his learning and experience in the House of Lords and on the Judicial Committee. No ex-Judge of the High Court, indeed, ever showed so great a willingness to place his services at the disposal of the country, not only as a Judge of the two Supreme Courts of the Empire, but also as an advocate of organic changes in the administration of the law. He presided over two of the most important inquiries into our legal system held in recent years. He was chairman of the County Courts Commitee,to whose recommendations we are largely indebted for the County Courts Bill, and of the Divorce Commission whose conclusions, whenever they are adopted, will exercise so large an influence upon the life of the community. To both these inquiries Lord Gorell, who possessed the true spirit of the law reformer, devoted his time and energy most unsparingly, and the public, no less than the profession, has reason to regret that his zeal, sincerity, and judgment will no longer be available for the causes which he did so much to promote.—*Ibid.*

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Branding as a Punishment.—Reactionaries have been indulging in a great deal of license since the excesses of 'white slave' traffickers on the one hand, and of Suftragettes on the other, have roused a demand for exceptional punishments. Illregulated minds fly at once, on occasions such as these, to crude and savage remedies,

forgetting—or oblivious of the principle of penology that excess of punishment defeats itself. It has been reserved for Judge Rentoul, K.C., sitting as a commissioner at the Old Bailey, to involve the administration of justice itself in these reprehensible teachings, by suggesting that the mediaeval penalty of branding for crime should be re-introduced in the case of foreign offenders to prevent their entering the country again after expulsion. The viciousness of the suggestion is the more remarkable when it is remembered that sentences of deportation may, on conviction of an alien, be added to the usual punishment for all offences for which there is power to impose imprisonment without the option of a fine, and that in the hands of magistrates (if there are any) who share Judge Rentoul's views the penalty of branding might be imposed for the most ordinary offences; not really for the offence itself, but for the crime of being a foreigner. The commissioners's extraordinary outburst was the less called for because there is, in fact, no justification for the idea that large numbers of criminals return to this conntry after having been deported: the last Returns issued by the Home Office show that the number of such cases has never in any year exceeded some four per cent. of the total number expelled since the passing of the Act. Still less excusable was it in the case before the Court, which was that of a young Frenchman who had never been convicted here previously, and who, therefore, did not come under the ban of the Commissioner's observations. Judicial excesses such as these cannot be tolerated, even in minor judges, and it is high time that a stop were put to them at the Central Criminal Court.—*Ibid.*

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Omissions in a Statute—In view of the fact that for upwards of five hundred and fifty years Justices of the Peace have constantly exercised, and still exercise almost daily, the powers first conferred upon them by 34 Edward III., section 1, to bind over unruly persons to keep the peace, it required some hardihood on the part of Mr. Muir, the senior Treasury counsel at the Old Bailey, to argue at Bow Street, in *Rex* v. *George Lansbury and others*, on April 25, that the traditional translation of the statute is absolutely erroneous. In the first volume of the Revised Statutes, which are published under the authority of an Act of Parliament, the relevant part of the statute is given in the following words: '. . . . and to take all of them that be [not] of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the King and his people, and the other duly to punish; to the intent that the people be not by such rioters or rebels troubled nor endangered. . .

' The word [not] is given in square brackets just as we have printed it, with a note on the part of the Revision Commissioners to the effect that ' All translations read thus.' Since, however, the Norman-French is given in a parallel column with its English translation, it is clear that all the translations have added this word 'not.' Three conclusions are possible. The omission of ' ne pas,' in the French, may have been an obvious printer's blunder which the translator corrected. Or the mediæval judges may have held in some unreported judgment that there had been a ' casus omissus '; in which case the translator would supply the omission in his version upon good judicial authority. Or, again, Parliament may really have intended to omit ' not,' and the correction may be based on a misapprehension as to the true meaning of the Act. In th t case, the meaning of the words in the Act would be this: All rioters and rebels would be regarded as of two classes persons 'of good fame' and 'others'; the former are to be ' bound over' and the latter ' punished'—which in those days probably meant ' whipped.' This distinction in the case of a political offence between persons of good character and ordinary rogues is not unreasonable, and is in harmony with the modern system of Prison Administration (which divides prisoners into three classes according to character), and the powers conferred on justices by the Probation of Offenders' Act, 1907. But, while speculation on this point has an academic interest, it is unlikely that any Court would now overrule the traditional translation of the statute, especially after its statutory incorporation in the Revised Statutes.—*Ibid.*

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CONTEMPT OF COURT.

Two allied branches of our criminal law are generally agreed to be at present in a very chaotic and unsatisfactory case, namely, the law of criminal libel, and that which relates to ' substantive contempt' of Court, *i.e.*, contempt which is committed not by a party to legal proceedings but by a newspaper or other independent party commenting on them, or otherwise interfering with them, in such a way as to interfere with the course of justice. The general rule as to the limits of permissible newspaper comment has been laid down by Lord Justice Cotton in *Hunt* v. *Clarke* (58 L.J., Q.B 490 at p. 492): ' If any one discusses in a paper the rights of a case, or the evidence to be given, before the case comes on, that, in my opinion, said the learned Lord Justice, ' would be a very serious attempt to interfere with the proper administration of justice. It is not necessary that the Court should come to the conclusion that a judge or a jury will be prejudiced, but if it is calculated to prejudice the proper

trial of a cause, that is a contempt.' So far, this rule is quite reasonable, but an extended meaning has been given to the words discusses in a paper . . . . the evidence to be given, which is very embarrassing to a newspaper editor; they have been held to include the publication of any evidence (not contained in the report of magisterial or other court proceedings) which may deprive the Court of the power of doing that which is the end for which it exists, namely, to adminisiter justice . . . . with reference solely to the facts judicially brought before it (Mr. Justice Wills in *Rex* v. *Parke*, 72 L.J., K.B., at p. 842). The result is that a newspaper must take care not to print facts about an accused person which may have an influence on the mind of potential jurymen. The test would seem to be whether the facts printed, and calculated to prejudice a jury, are relevant to the charge or so irrelevant that they could not influence any reasonable person. Two recent cases illustrate the application of this vague and unsatisfactory rule; both came before the Divisional Court last Wednesday (April 23), on motions to commit newspaper editors. In *ex parte Baxter*, the *Daily Mail* had devoted a paragraph to the case of a woman accused of murdering a man, and had erroneously stated that the man had made a will in her favour. This statement was held to be a contempt, and a fine of 100*l.* was inflicted. In a second motion relating to the same case *The Globe* was alleged to have committed contempt by publishing likewise a news paragraph on the same case; this paragraph referred to a supposed duel fought by two men on the prisoner's account. This was held to be so irrelevant to the issue of murder that it could not possibly affect the mind of any juryman adversely to the prisoner on the actual charge of murder, and the motion was dismissed.—*Ibid.*

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SIR ROBERT FINLAY AND THE SAMUEL CASE.

Mr. Ginnell asked the Secretary to the Treasury if any public expense had been incurred in connection with the retention of his seat in that House by Sir Stuart Samuel; and would he say at whose instance, how much, and to whom paid.

The Attorney-General: My right hon. friend has asked me to answer this question. About 150*l.* was expended on shorthand writing and printing in the Select Committee. In connection with the proceedings before the Privy Council 740*l.* was incurred on the authority of the Treasury, this sum including fees to counsel and the cost of shorthand writing, printing, etc. The right hon. and learned member for Edinburgh and St. Andrews Universities, who argued

the case before the Privy Council at my request, has refused to accept a fee on the ground that he appeared in a sense on behalf of the House of Commons and was performing a public duty. The Prime Minister has already expressed his appreciation of the services of the right hon. and learned gentleman, and I have also thanked him. I am glad of this opportunity of informing the House of Commons of the action taken by the right hon. and learned gentleman.—*Ibid.*

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The Scott Judgment—In camera.—When Mr. Justice Bargrave Deane first declared that publication of any part of the proceedings of a case heard before him *in camera* was a contempt punishable, if necessary, by imprisonment, we made a protest against this assertion of ' a claim too broad even for the Court of Divorce,' and we maintained that the better view was that instead of enlarging the doctrines as to contempt and the power to commit for it, there was great necessity for jealously watching the exercise of that exceptional jurisdiction (Law Journal 1911, p. 766). The decision of a majority of the full Court of Appeal that this judgment was unappealable on the ground that the contempt was of a criminal nature was also immediately challenged in these columns, and we pointed out that to disclaim jurisdiction or the right to interfere was seldom a satisfactory way of dealing with a substantial legal controversy, least of all where the liberty of the subject was involved (Law Journal 1912, p. 438). In both these matters we believe we expressed the general view of the profession as well as of the public who could not understand how the sending by a successful petitioner of a copy of the official notes of the proceedings to persons interested in her suit in order to vindicate her character could be a criminal contempt, or how such an offence—if offence it was—could be punishable by imprisonment, without limit and without appeal at the discretion of the judge who heard the case. We are glad that on each and every one of the grounds above indicated the House of Lords has by a unanimous decision reversed the judgments in the courts below, and that by a careful and searching examination of the precedents and principles involved it has been able to lay bare the grave errors involved in the Divorce judge's usurpation of power and jurisdiction and to put the whole theory and practice of *in camera* proceedings and of punishments for contempt on a safe basis. The illuminating judgment of Lord Shaw, which will constitute the *locus classicus* of authority on these subjects for the future, was based on the dictum of the great Master of the Rolls, Sir George Jessel, that ' the

High Court of Justice has no power to hear cases in private, even with the consent of the parties, except cases affecting lunatics or wards of court or where a public trial would defeat the object of the action.' Those are the sole admitted exceptions, definite in character and founded upon definite principles, on which the House of Lords has founded its judgment that the original order to hear the Scott case *in camera* was not only a mistake, but beyond the judge's power, and that the order in the contempt proceedings was an exercise of judicial power violating the freedom of the subject. The grave and enlightened verdict of Hallam, the constitutional historian in which he ranks the publicity of judicial proceedings even higher than the right of Parliament as a guarantee of public security, is confirmed and sanctified by this judgment.—*Ibid.*

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The Bar and the Empire.—A noteworthy increase has occurred in recent years in the number of men who come to the Inns of Court from the King's dominions beyond the seas. More than one third of the students called to the Bar during the present term bear Asiatic names. This increasing use of educational facilities of the Inns by Indian and Colonial students means that the Bar is playing a larger part in the unity of the Empire. The Imperial character of the Bar of England is certainly not likely to be improved by the recent refusal of a small majority of the members of one of the Circuits to admit an Indian gentleman to the Bar Mess. The refusal—which has been the subject of a good deal of comment in the lay Press—was based solely and entirely on the complexion of the applicant. It was admitted, indeed, that, apart from that colour which is inevitable in an Empire on which the sun never sets, no objection could possibly be urged against him. If the matter were merely one of social moment there would, of course be little or nothing to say. The members of a club have a perfect right to decide whether a particular applicant for admission is 'club-able.' But a Bar Mess is something more—or something less—than a club. By one of its trade union rules a barrister who is not a member of the Mess is denied the full Mess, right to practice in the Courts on the Circuit since no member of the Mess, whether leader or junior, is at liberty to hold a brief with him. If, then, the members of a Circuit decline to recognise the Imperial character which the Bar has acquired in recent years—if they insist upon treating the Bar Mess as a club to which only 'club-able' men shall be admitted—they must be prepared to forego the right to maintain the trade union rules which hither to the have enforced. It is wholly anomalous that reputable member of the English Bar,

no matter what his colour may be, should not be free to exercise his full professional rights in all the English courts.—*Ibid.*

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SIR EDWARD CLARKE, in proposing a vote of thanks to Sir Rufus Isaacs for presiding, said: I am grateful for the opportunity which has been given me of proposing a vote of thanks to the Attorney-General for presiding at this meeting. There have been during the last few months a good many accusations, hinted and suggested never definitely made against the character of the Attoney-General. Now, the usefulness of our profession, and its title to the privileges and repute that it enjoys, depend on the maintenance in our ranks of a very strict sense of honour, and I think the members of the Bar have been greatly troubled by hearing such suggestions made against our leader and have followed with painful interest the course of the discussion. It is a matter in which we are all concerned. (Hear, hear) We share with the Attorney-General the duty of maintaining the honour of the profession although of course it is upon him that the responsibility chiefly rests. Now I have read with care all that has been proved in this matter, and I am satisfied, and I believe my brethren of the Bar agree with me, that the charge of corruption or unfaithfulness to public duty has wholly failed. (Loud cheers.) If I were not so satisfied I should not be here to-day. I notice that his assailants are now talking of mistakes and imprudence. That is a different matter. We all make mistakes, though the character of those mistakes varies with the differing circumstances of our own lives. But the important thing is that a mistake or an indiscretion leaves no stain on the character. (Hear hear.) And it is only a mean malignity that would for personal or political motives, make use of an error of judgment to check or to deflect from its natural course a long career of private honour and of public service. (Loud cheers.) I should have said this if there were between me and the Attorney-General only the bond of fellowship which comes from our both being members of the Bar. But there is much more than this. I have known him for many years—from twenty to twenty-five years —and it is because I know our leader to be a man of honour as well as an accomplished lawyer that I rejoice to be allowed to propose this vote of thanks to him to-day. (Loud cheers.)—*Ibid.*

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LORD JUSTICE VAUGHAN WILLIAMS, replying to the toast of 'The Bench,' proposed by Mr. P. O. Lawrence, K. C., said he heard it frequently said that the love of justice among the English people was declining. He was an optimist; he did not believe it. He was

told that the people had a tendency to prefer justice administered by people who did not sit in open court, who could deliver their judgments without giving any reasons for them, and who could not be effectively criticised. He did not believe that the people of England wished for anything of the sort; they wished for justice administered in open court, before the people, and, best of all, administered by judges who where open to criticism.

Lord Halsbury, in responding to the toast of 'The Bar,' proposed by Judge Scully, said he had been a member of the Bar for sixty-three years, and he claimed to be one still. No one, unless he had been a judge, could recognise the infinite advantage it was to a judge to have before him an independent Bar. There had been judges who were too impatient, who occasionally had the desire to exhibit their extreme quickness and to make up their minds before they had heard half the story. But it was a little necessary occasionally to take time to consider what was justice. Until one had heard the whole story one could not form a true judgment, and the interruption by the judge before he had heard the whole story sometimes diverted the attention of the advocate, and, it might be, induced the judge to take a certain view, whilst if he listened he would not have arrived at the same conclusion. After a considerable experience on circuit and at the Bar generally, he had never regretted that he had had such an education in life as one received by finding oneself associated with men who had an intelligent outlook on life, and at the same time were able to recognize the fact that people sometimes took different views from themselves.—*Ibid.*

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The Suppression of Names in the Courts.—An increasing tendency towards the suppression of the names of parties and witnesses is to be observed in some of our courts. The tendency was illustrated in the Bow Street Police Court on Monday, when Mr. Graham-Campbell had before him a prisoner who was charged with attempting to commit suicide at the Charing Cross Station on the District Railway. The whole proceedings were veiled by anonymity. Not only were the name and address of the prisoner, which were handed to the learned magistrate on a piece of paper, withheld from the public; the names of all the witnesses, except that of the railway official at whose instance the charge against the prisoner was made, were suppressed. There may, of course, be circumstances which make it desirable in the interests of justice for such secrecy to be observed, but there would appear to have been nothing in this particular case to warrant a departure from the wholesome rule of publicity, and it

is unfortunate that Mr. Graham-Campbell should have allowed the rule to be broken on the very first day on which he began to sit as a magistrate. When the late Sir A. L. Smith was Master of the Rolls an application in the Court of Appeal was made by a member of the Bar who desired to refrain from mentioning the names of the parties. 'I strongly object to that,' said Sir A. L. Smith. 'It seems to be getting too common. This is a public Court of justice, and I entirely disapprove of names being suppressed.' For such a rebuke there is even greater need at the present time. Publicity is a most useful deterrent, especially in the Criminal Courts, and the suppression of names is bound, in the long run, to do the administration of justice a grave mischief. Moreover, when the names of parties or witnesses are not disclosed there must inevitably be speculation as to their identity, and the names of persons who have no connection with the case may be brought into discussion. Even if occasionally the interests of justice make it desirable that names should not be given, the increasing tendency towards suppression ought to be sternly discouraged.

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Tort Arising Out of Contract.—A difficult legal problem usually arises when the question to be determined is whether a party who has failed to perform a duty arising out of a contract can be made liable in tort for injuries sustained, in consequence of his breach of duty, by a person with whom there is no privity of contract. In *White* v. *Steadman*, in which Mr. Justice Lush delivered judgment last Monday, the facts were that the plaintiff had gone for a drive with her husband in a landau hired by the husband from the defendant; she sustained injuries in consequence of an accident caused by the restiveness of the horse, and, according to the finding of the jury, the defendant knew, or ought to have known if he had used proper care, that the horse was not safe at the time when the carriage was let to the husband. It was contended that, as the lady was no party to the contract, the defendant owed no duty to her and could not be made liable on the finding of the jury. The interesting chain of reasoning by which the learned judge arrived at the conclusion that this argument was unsound may be thus summarised:—First, the plaintiff was one of the class of persons whom the defendant must be taken to have contemplated would, or might, use the carriage. This said the learned judge, was too clear to require a finding from the jury, and, indeed, it would be absurd to suppose that the defendant believed the husband had hired a landau for a drive in solitary dignity. Secondly, a horse known to be vicious is in the class of dangerous animals,

and the liability of a person who lets it out is the same as that of a person who allows another to use, or come in contact with, an animal that is dangerous in itself. Thirdly, the defendant, if through his own carelessness he did not use the means of knowledge at his disposal, was in the same position as if he knew that the animal was vicious. For these reasons the learned judge held that the defendant was under a duty to the plaintiff, and that, as she had been injured by a breach of his duty, she was entitled to judgment. A simpler ground, perhaps less open to criticism, on which the judge thought that this conclusion might also be supported, is that the defendant accepted the plaintiff as a passenger, and was bound to use due care that she was safely carried. It may be thought that the judgment conflicts with the decision in *Cavalier* v. *Pope*, that a landlord who had promised to repair a dangerous floor was not liable to the tenant's wife for injuries caused by its defective condition. There is, however, the distinction that a landlord owes no duty to anyone at common law to keep a house in good repair. If the husband, instead of the wife, had been injured, he could only have brought an action in contract, and there was no contract between the landlord and the wife on which she could base her claim.—*Ibid.*

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United Law Clerks' Society.—The Lord Chancellor, in proposing 'Prosperity to the United Law Clerks' Society,' said that it took someone who had been in contact not only with a great many phases of the law but with a great many phases of society generally to realise what the law clerks of this country meant. They all belonged to one great profession. For one case which came before the judges there were ten which came before the barrister, there were a hundred which came before the solicitors, and there were a thousand which came before the managing clerks. They it was who handled the run of the everyday cases, which concerned human nature sometimes in its least pleasing and sometimes in its more pleasing phases. They it was who came close to the grim realities and who saw near at hand what the relation of individuals to each other and society really was. It was a very human occupation, much more human than people thought who imagined that it was all routine and details. If the machine did not creak, it was because of the multitude of skilled hands that were keeping it running. Under the Anglo-Saxon constitution, whether one looked at it in this country or in the United States of Canada, for the law had a common origin in all those places, the lawyers performed a very

great function. They kept the wheels of society running smoothly, and it was more than mere law that they were concerned with. They were relations far outside the law with which they were intimately concerned. People talked of litigation. Why, for one case in which there was litigation there were ten cases in which litigation had been stopped at the outset. Law clerks were that great class which handled disputes in their first and complex details, which reduced them to smoothness and shaped them finally before they were brought before a tribunal. That was the work which was done by the law clerks, and anyone who understood English society and its constitution ought to be very grateful to that important class. It was not by any artificial demand, but from the inherent qualities of human nature, that the law and the necessity of lawyers to adjust the relations of society arose. It had been a tradition of this society since the year of the first Reform Act to do what it could to alleviate the human lot. There were some men who would always get on; nothing short of a miracle would doom them to misfortune; but those were very few. There were others who, on the whole, were likely to prosper, and most of whom did prosper; there was a still larger class which just managed to get along; and there was another class which, partly from misfortune and partly because nature had not helped them as it had helped their brethren, had a bad time and would go under but for that sense of comradeship which brought their more fortunate brethren to their rescue. He was speaking to the more fortunate brethren, those who had been able and willing to help, and who had made a position for themselves. The society was one of the earliest mutual assistance societies, and its aim had been to provide against old age, sickness, and misfortune to an extent which was very remarkable in a time when no State assistance was given. They lived in times when some people thought that there was a disposition on the part of the State to give too much assistance. There were people who actually spoke of the State poking its nose into people's private concerns, But there the new system was. The society had accomplished remarkable things in the past, and his belief was that the new system of compulsion would not really interfere with the work of a society such as theirs. He believed that it would in the end, when the friction and confusion and the smoke and the dust were cleared away, enable an association such as this to raise the level of its work and make a yet better sort of provision with no more liability and with no more effort, because the amount of work which it used to have to do would be taken off its shoulders to some extent, and at all

events the mechanism would have been simplified. He was an optimist, and some people might think that was too sanguine a view. He thought there was a tendency all round on the part not of one class but of all classes to insist that no effort should be spared to, if possible, bridge over some of the most glaring of the inequalities which separated class from class in a highly-organised State such as ours. We were a very rich nation, and he saw no signs of our riches going down. Bad days might come, bad days would doubtless come, but we were at present in good days, and it was a moral obligation that he who was prosperous should try to do something for him who was less prosperous. He believed that to be for good whether it was the work of the State or of such a society as this. It was a real tendency which manifested the truth that in the balance human nature was good and not bad. The society was deserving of support, first, because it was a society whose operations were directed to the help of those who were invaluable in the law and who constituted, after all, by far the greater bulk of the profession to which all present belonged; and, secondly, because the spirit of its work and the aims of its organisation were just the spirit and just the aims which they all desired to encourage and to see flourish.

Mr. A. J. Walter, K.C., who proposed the toast of 'The Legal Profession,' said that in no country in the world did the litigant leave the court as he did in England with the knowledge that everything had been said that could be and that his case had been fully heard. The position which our judges occupied was greatly esteemed in foreign countries, a position of complete independence, but one in which everybody felt that the judge had one single object in view—namely, to do justice between the parties without fear or favour. As to the Bar, they tried to do their duty so that the client might have his facts presented before the court. Sometimes they were blamed for doing it at a length which was considered undue, but though condensation was of great value it must not be carried too far. The solicitor had the family secrets, the business secrets, the secrets of trade in his hands, and he held them sacred, and the public knew it. They heard now and again of those who had been guilty of a breach of that confidence, but the proportion which they bore to the great body of the profession was that of a thimbleful to the ocean.—*Ibid.*

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THE APPELLATE JURISDICTION BILL.

The Attorney-General, in moving the second reading of this Bill, said it had been under discussion in the House last year and

the year before, and, in substance the same, it now came from the other House. It proposed the addition of two Lords of Appeal in Ordinary, increasing the number from four to six, the appointments to be on the same conditions as those made under the Appellate Jurisdiction Act, 1876. In the second place, the Bill provided that every Lord of Appeal should be able to sit in the Court of Appeal. At present they were not *ex-officio* Judges of the Court of Appeal, and statutory power was necessary to enable Lords of Appeal to assist the Court when requested by the Lord Chancellor to do so. In the third place, certain alterations were proposed with regard to the number of Judges in his Majesty's Dominions who were empowered to sit with the Judicial Committee of the Privy Council. It was proposed to increase the number from five to seven. This part of the Bill did not create any new Law Lords, but made seven the maximum number. The House should recognise and appreciate that the Bill carried out the obligation of the Government to give effect to the unanimous resolution passed in the Imperial Conference of 1911. One of the main connecting links between the various constituent parts of the Empire was the appeal to the Sovereign in Council. From all the Dominions these appeals came and were heard by the Judicial Committee, which dealt with vast interests in a quiet and unostentatious way. It was a tribunal with the widest and most extensive jurisdiction of any Court of justice ever known to civilization. It had jurisdiction over more than a quarter of the world. The Judges of the Judicial Committee had to be not only familiar with English, Scottish, and Irish law, but they had also to be equipped with a knowledge of the laws and customs of all the nations in the various parts of the Empire—French law, Roman Dutch law, old Roman law, Maori law, all the various laws relating to India. These were only instances; and when the House considered the vast extent and area of the jurisdiction of this supreme appellate tribunal they would understand why it was so much importance was attached by the representatives of the Dominions at the Conference to the proposals he was bringing before the House. Why was it the Imperial Conference desired that there should be this addition to the numbers? The Court, either in the House of Lords or in the Judicial Committee of the Privy Council, so far as it was made up of members who were bound to sit, consisted only of the Lord Chancellar and the four Lords of Appeal in Ordinary. That gave only five, and he doubted whether they were justified in including the Lord Chancellor, who had so many other functions to discharge. Even if they reckoned the Lord Chancellor, they could not constitute two Courts out of that numerical judicial strength.

It was true they summoned and constituted Courts from those who were not bound but were willing to sit, and he acknowledged the valuable and distinguished services rendered in this connection by Lord Halsbury and the late Lords Gorell and Ashbourne, as well as by Lord Macnaghten, one of the greatest judicial figures that the legal history of this country had ever known. They proposed to add two Judges, and even then they would not be able to man both the Judicial Committee and the House of Lords without the assistance of some of those who were not bound to sit but were ready to give their services when they were required. There had been a proposal to reduce the salary for the new Judges, but it had been decided to keep it at the usual figure. In the resolutions of the Imperial Conference it was proposed that the existing practice should be modified and that a dissentient Judge should be free to give his reasons. In the House of Lords all the members of the tribunal were entitled to give their judgments separately; but an appeal to the Privy Council was an appeal to the King in Council, and the Judicial Committee gave advice to the King on which he accepted or rejected the petition. After a good deal of correspondence the Dominions had substantially agreed to the view expressed by the representatives of the tribunal here that it was better to adhere to the old practice. No objection was raised to the proposal of the Government to increase from five to seven the number of Judges, Chief Justices, and representatives of the Dominions qualified to sit on the Judicial Committee. Under the present system, with the number limited to five, it was not possible to give a representative to New Zealand. New Zealand desired representation, and it was thought New Zealand should have it, and consequently it was proposed to extend the number to seven. It did not involve any increase in expenditure. At the present moment there were altogether 63 appeals in the lists—15 from India, 24 from the Dominions, including 15 from Canada, and 24 to the House of Lords. He hoped the objections that had been foreshadowed to the creation of two new Law Lords would not be persisted in, for it was impossible for the work of the Empire to be properly done unless the House sanctioned it.—*Ibid.*

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Mr. Justice Bankes and adjournments:—On a case coming before Mr. Justice Bankes it was stated that the plaintiff's counsel was at the moment engaged in another Court. Mr. Justice Bankes waited half an hour and then said that as there was no other case ready he must proceed. The plaintiff could, if he pleased, have the case stand over; but in that case he must pay

all the costs incurred by the defendant in consequence of the adjournment, and must pay them before the case could come on again. Or if he pleased the plaintiff could go into the box and tell his story in the absence of counsel, and he (Mr. Justice Bankes) would give him every assistance. At this moment Mr. Beresford came into Court, and said he had just been asked to hold the brief of the plaintiff's council, and he asked that there might be an adjournment until 2 o'clock. Mr. Justice Bankes said the case must proceed without further delay. On the following day the counsel briefed in the case said he wished to apologize for his absence. He had had no idea that the case was coming on, or was likely to come on, until a message was brought to him while he was actually conducting a cross-examination in another Court. He extremely regretted what had occurred, and disclaimed any intention of showing discourtesy to the Court; and if he had any idea that the case would be reached at the time, he would have seen that it was properly looked after. Mr. Justice Bankes said he was glad to have heard the explanation. He had spoken strongly, for he had felt that the client's interests had been neglected; and he was glad to know now that what had taken place had been due to a mistake and not to any intentional disregard of the interests of the client. Such difficulties did arise sometimes. It was easy to be wise after the event, but he thought it would have been better if counsel yesterday had sent him a message explaining the position. However, he fully accepted the explanation which had now been given.—*Ibid.*

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Restitutions by Infants.—MR. JUSTICE LUSH held in *Stocks* v. *Wilson*, a few weeks ago, that an infant who had by fraudulently representing that he was of full age induced the plaintiff to sell goods to him was liable to account for their proceeds, under the equitable rule that an infant guilty of fraud can be compelled, as far as possible, to put the other party in the same position in which he was before the transaction. In *R. Leslie* (*Lim.*) v. *Shiell*, in which Mr. Justice Horridge gave judgment last week, the same principle was applied by that learned Judge to a claim by a firm of moneylenders who had been induced by the defendant's fraudulent representation that he was more than twenty-one years old to make advances to him. The action was for damages for fraudulent representation, and alternatively for the amount of the advance as money had and received by the defendant to the use of the plaintiff. The learned judge held, as on the authorities he was bound to do, that an action for damages for fraud does not lie against an infant,

when the fraud was an inducement to the contract; but, following the decision of Mr. Justice Lush, he decided that, even when the fraud was connected with a contract, the equitable principle of restitution must now be applied. The Court of Chancery, in his view, did not consider whether or not the fraud was connected with a contract; it simply acted on the rule that an infant must not be allowed to retain what he has obtained by fraud. As a stay of execution was asked for and granted, it is possible that the case will go further, and a decision by the Court of Appeal as to the application of the equitable rule to common law actions would be welcome. According to the previous judgment of that Court in *Levene* v. *Brougham* (1909), the equitable principle could not be applied where the plaintiff was suing directly on a contract of loan, as it was there held that an infant was not estopped by his false representation from relaying on the Infants' Relief Act.

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WHAT'S THE GOOD OF MARRYING?

Scene—Interior of railway carriage. *Dramatis Personae*—Mr. EDWIN LOVE, Articled Clerk, and Mrs. ANGELINA LOVE, B.A., M.A., LL.D., LL.B., &c., &c., starting on honeymoon.

Edwin.—At last alone, Thank goodness!

Angelina.—It is indeed pleasant to get the tedious mummery of the affair over.

Ed.—It is. We are now, dear, in the eye of the law, one—one person, one heart, one mind, one purse.

Ang.—Pardon me, Edwin dear. Under the present state of the law that is scarcely accurate. You are practically penniless, whilst I am an heiress; what is yours is mine, no doubt, but what is mine is my own.

Ed.—I surely have now rights——

Ang.—Not many. The Married Women's Property Act, 1882, gives me all my property for my separate estate.

Ed.—True, my darling. But not with a restraint on anticipation. Is it not still possible for me, by "kicks or——

Ang.—" Kisses "—fossilized quotation, Edwin dear—to get it out of me. Try first kicks.

Ed.—That I could never do; but assume, for argument, that I do.

Ang.—Then should I immediately seek the protection of the justices, under the Summary Jurisdiction (Married Women) Act,

1895, and obtain an order in the nature of a judicial separation; or, if the kicks were excessive, I should petition, under the Act of 1857, for a decree of judicial separation on the ground of cruelty.

Ed.—True. But with thee, my ownest, kisses would cajole.

Ang.—Foolish expressions of sentimental affection, Edwin, I extremely dislike. Kisses would but drive me to leave you.

Ed.—That, at least, you have no right to do. A husband can both confine and chastise his wife.

Ang.—My dear Edwin, your law is really much out of date. Have you so soon forgotten *R.* v. *Jackson*[1]? When coaching you for your "Final" I have already particularly impressed that point on you.

Ed.—I must indeed plead guilty to a lapse of memory. The wife, I remember, can, at her sweet will, leave the husband, and he can neither detain her nor chastise her. Well, any way, Angelina, what's sauce for the goose——

Ang.—Want of accuracy in a lawyer is a serious fault. You evidently want to say, What is sauce for the gander is sauce for you—the goose.

Ed.—Very sharp. But I mean if you can leave me, I can leave you.

Ang.—Not against my wish, for that would amount to desertion, and I could repair to the justices, under the Summary Jurisdiction (Married Women) Act, 1895, and obtain an order on you for maintenance.

Ed.—Well, so could I if you left me.

Ang.—Really, Edwin, do you not know that the Act only gives this right to women? You, Edwin, would be under the painful necessity of first of all going to the workhouse; to the poor law guardians, in consequence of the Married Women's Property Act, I should, of course, be liable.

Ed.—But if you left me I should institute a suit for restitution of conjugal rights.

Ang.—And pray tell me, you silly boy, how would you enforce the decree?

Ed.—Why, the Court would imprison you for contempt.

Ang.—Now really, Edwin, you are most provoking. After all my careful coaching! Have you forgotten the celebrated case of

1, (1891) 1 Q. B. 671.

Weldon v. *Weldon*[1], which led to the passing of the Martimonial Causes Act, 1884? and that——

Ed.—Ah! of course, yes, I remember, no decree for restitution can be enforced by process of contempt.

Ang.—Nay, you silly boy; instead of a restitution decree you would but get, if I declined to obey, the right to petition for a decree for judicial separation.

Ed.—Ah! you don't know everything, Angelina dear. I could apply to the Court to have your marriage settlement altered in my favour. That was decided by *Swift* v. *Swift*.[2]

Ang.—Edwin, this is shocking. Did I not tell you that *Swift* v. *Swift*[2] was distinguished in *Michell* v. *Michell* [3], and that, if the property is settled with a restraint on anticipation, the Court cannot interfere? You will I fear never scrape through your "Final."

Ed.—Well, Angelina, you needn't be so rough on me. We can't all get degrees. However,. you't desert me, and I shan't desert you.

Ang.—And if you did I have the right, if I so choose, to follow you and break into your house; at least, so Mr. Justice Barnes decided in the unreported case of *Dunhill* v. *Dunhill.*

Ed.—And can I follow you and break into your house?

Ang.—Certainly not, That would be my separate property and I could sue you for trespass.

Ed.—Well, we shan't do that. We'll settle down and lead a quiet life for you know, Angelina, we shan't have too much income to start on—I mean I shan't–but I'll get an abatement of income tax.

Ang.—Oh! Edwin dear, when will you know any law? Don't you know that the Commissioners of Income Tax hold that husband's and wife's incomes have to be assessed together, and that therefore you cannot claim abatement; and moreover, that you are primarily liable for the income tax?

Ed.—Oh! but I say, Angelina, that will swamp all my income. I shan't have any pocket money left.

Ang.—That's excellent. That puts you completely in my power. I shall be able to keep you good by not allowing you too much pocket money.

Ed.—Oh! but that's a beastly shame, Angelina. By Jove, that reminds me. If you do, I'll sue for that 100*l*, I lent you before we

1. L. R, 9 P. D, 52.
2. (1891) P. 129.
3. (1891) P. 208.

were married—you know, when Madame Figurante was theratening to sue you for some dresses—before the old uncle died, and you came into all that money.

Ang.—Will you, dear, really ?

Ed.—Certainly I will.

Ang.—Edwin, it's truly dreadful! you're not nearly ready for your examination! Do you not know that Mr. Justice Wills decided in 1885, in the case of *Butler* v. *Butler* [1], that the Married Women's Property Act, 1882, does not alter the old common law rule, that Marriage extinguishes pre-existing liabilities between husband and wife ? By marrying me, Edwin dear, you wiped out that debt.

Ed.—What a beastly shame! Well, it was very good of you, before we started to-day, to give me a cheque for 150*l.* to send to my tailors; but if you don't pay me that 100*l.*, my sweetest one, by Jove, I won't pay you back that 150*l.* Got you there, dear,

Ang.—Really, you're too provoking! That's a debt due to my separate estate, for which I can sue you. Your debt is extinguished, and therefore you can have no right of set-off.

Ed.—Well, never mind, we're not likely to sue each other: we shall live a nice happy, quiet life.

Ang.—I don't know. I was thinking of practising alone. Of course, if I don't trade, I couldn't be made a bankrupt; if I trade and fail I might be made a bankrupt.

Ed.—But I say, Angelina, that would be rather awful for me. Why, I might as well have married my poor little cousin, who hasn't got a penny.

Ang.—The nasty little thing! Thank goodness, I have done her a nasty turn. I told your aunt she wasn't the proper sort of girl to have as a governess, and she's going to give her notice.

Ed.—But that's slander. It wasn't true, was it ?

Ang.—No; it's slander and actionable.

Ed.—And I can be made a party to the action. That beastly case which decided that a husband is still liable for his wife's post-nuptial torts—I've forgotten the name.

Ang.—I might have known you would—*Seroka* v. *Kattenberg*[2] Sir. Now, don't you forget it again. I didn't say anything of the kind. I only pretended I did to see if you'd know that decision.

1. 14 Q. B. D. 831.

2. See also *Erle* v. *Kingscote*, (1900) 1 Ch. 203; and *Cuenod* v. *Leslie*, (1900) 1 K. B. 880.

Ed.—Well, what's the good of a fellow marrying now-a-days?

Ang.—Well, he can't be convicted of stealing his wife's property while they are living together: so says the Married Women's property Act, 1882.

Ed.—Can't he? Then here goes (*gives Angelina a hearty kiss*).

Ang.—How dare you, Sir, kiss a doctor of laws? If my strength only permitted it, I would horsewhip you.

Ed.—If you did I'd go to the magistrates and get a judicial separation, under the Summary Juisdiction (Married Women) Act, 1895, on the ground that you had committed an aggravated assault, and that I went in danger.

Ang.—Caught you, you naughty boy. The Act only enables wives to apply, not husbands.

Ed.—Angelina dear, what a lawyer you are! you must really go to the Bar. Eh, guard? what? five minutes here? You won't go to the Bar? Well, I will (*exit in haste*).—*Law Notes.*

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Duress and Gaming Contracts.—'BONI judicis est ampliare justitiam (not jurisdictionem),' said Lord Mansfield, and the true maxim of our law is to amplify its remedies without usurping jurisdiction and applying its rules so as to secure substantial justice. This is the office of the good judge, and there is no one among our younger judges who knows better than Mr. Justice Scrutton how to fulfil it. In a reserved judgment delivered by him last week on a claim brought by the proprietors of a French hotel on a cheque given by a young Oxford man in payment of a gambling debt several points arose, on all of which the learned judge found in favour of the defendant (*Societe des Hotels Reunis* v. *Hawker*). First, it was said that the cheque, having been obtained by the manager of the hotel from a boy of 22 by a threat of criminal proceedings if it was not given and a suggestion that nothing of the sort would take place if it was, could not be enforced in an English Court. Such a compromise is lawful in France, but the cheque was an English one, so that the agreement was to be performed in England, where compromises of alleged crime are illegal, and on that ground, as well as that of duress, the action failed. But it could not succeed here for other reasons. The officials of the hotel knew that the money was borrowed for gambling at the local casino, and was, in substance, spent there for gambling. This would, as the authorities at present stand, not affect the note if the claim was

for money lent (*Saxby* v. *Fulton* [1909]), but as the action was on a security given for such money the transaction came within the provisions of the Gaming Acts, and was consequently void (*Moulis* v. *Owen* [1907]). The defendant had not pleaded the Gaming Acts, but in Mr. Justice Scrutton's view, if the Court is satisfied that a transaction is illegal or unenforceable by statute, it must take the objection itself, even though the parties do not wish to raise it. Applying his special experience in the Commercial Court, the learned judge held that what was long ago decided as to policies under the Marine Insurance Acts (see *Gedge* v. *Royal Exchange Insurance* [1900]) applied with at least equal force to common bets. Feeling bound to take notice judicially of the purpose for which the loans were made, the judge allowed the pleadings to be amended accordingly; and there, of course, was an end of the case. No excuse was required for this salutary warning to hotel-keepers and others abroad as to the practice of the English Courts when dealing with securities given in such questionable circumstances. The judgment may, perhaps, also serve another good purpose here in our own Courts, where there is sometimes an inclination to wink at such transactions and even to discourage litigants who venture to raise the defence of the Gaming Acts.—*Law Journal.*

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Absent Counsel's fees:—MUCH of the criticism of absent counsel (says the *Globe*) seems to be based on the belief that advocates do not suffer from the inability of ordinary mortals to be in two places at the same time A barrister seldom knows when he accepts a brief exactly when the case will be tried. Even a member of the Bar who receives but two briefs in the course of a term may be overwhelmed by the discovery that the two trials will clash. What, of course, an absent counsel can alway do is to return his fee.

> My learned profession I'll never disgrace
> By taking a fee with a grin on my face.
> When I haven't been there to attend to the case.

The Lord Chancellor in 'Iolanthe' is by no means the only eminent member of the profession who has acted on this principle. Mr. Atlay, in his 'Victorian Chancellors,' relates an interesting incident in Lord Halsbury's career. 'His last appearance in Court at the Old Bailey was in November, 1888, under curious circumstances. He had acted as counsel in a probate action arising out of the testamentary dispositions of an eccentric citizen of Leominster. His clients were not only unsuccessful, but were committed for trial on the charge of perjury. Rightly or wrongly, Sir Hardinge Giffard believed that he

had not done them full justice in the hearing before Sir James Hannen, and he insisted on defending them, devoting to the task, as I have been told by one of his juniors, his whole time and attention during a trial which lasted eight days, and eventually returning his fees.'—*Ibid.*

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CONGREGATION'S CONTROL OVER MINISTER.

The strained relations existing between a congregation of Particular Baptists and its pastor were the subject of an action in the Chancery Division, in which judgment was delivered last week by Mr. Justice Swinfen Eady (*Walters* v. *Hughes*, May 29). The congregation, or 'church,' seems to have consisted of some 175 effective members, and it had built itself a chapel at Pontypool. The management of the chapel was vested in trustees, and an officiating minister could only be appointed under the authority of a church meeting, duly convened, at which a majority of the members of the church were in favour of the appointment. The trust deed containing these provisions was, however, silent on the subject of dismissal. The defendant had been duly appointed as minister at a salary of 200*l.*, and the plaintiff—the trustees—now sought to have the defendant restrained by injunction from further officiating as minister. The plaintiffs alleged that the defendant had been dismissed from his post, whilst the defence was that the trustees had no right to prevent his acting as pastor to the congregation, and that a resolution passed at a church meeting dismissing him was invalid and *ultra vires*. Mr. Justice Swinfen Eady held that the church meetings whose validity was disputed had been properly called and conducted, and that the defendant was wrong in his opposition to the trustees. The plaintiffs were, therefore, entitled to an injunction. The judgment (as reported) is not a reasoned one, and nothing is said as to any technical difficulties relating to the absence of express power to dismiss in the trust deed, and to the want of any definite term of notice to the defendant. It seems, however, fairly plain that on general principles a voluntary association, such as the body of members of this 'church,' must have control over its own affairs, so as to prevent a minority from throwing the whole machinery of the associated body out of gear. Also, on general principles, the law of master and servant seems applicable, and a power of dismissal without notice seems inherent when regulations are deliberately set at naught by a salaried officer, even though he be a minister.—*Ibid.*

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PREVENTIVE DETENTION.

The only point of public interest which arose out of the sitting of the Court of Criminal Appeal on Monday was a pronouncement of Mr. Justice Darling, who presided, upon the objects and tendency of 'preventive detention.' While delivering judgment in the case of *Rex* v. *Heron*, an appeal by a habitual criminal against a sentence of three years' penal servitude and five years' preventive detention, Mr. Justice Darling intimated his opinion that preventive detention was a preliminary stage of an experimental and tentative kind towards the revival of some system of 'industrial serfdom,' under conditions of isolation from normal civilized life, for persons habitually convicted and evidently determined never to abandon a life of crime. Two points are worth noting in this connection. In the first place, the conditions which Mr. Justice Darling and some other criminal law reformers appear to advocate were satisfied on the whole by the old law of transportation. Under sentence of transportation the convict was removed to a 'distinct island'—formerly one of the West Indies and afterwards Australia or Tasmania. There he was let out as a bondsman to planters—*i.e.*, kept in a state of 'industrial serfdom.' Transportation was abolished in 1853, and replaced by penal servitude, for the following reasons: (1) Each colony in turn, as it attained self-government, repudiated the system of dumping criminals upon it—an inherent vice of all such schemes; (2) in practice discipline could only be maintained among the bondsmen by the continued exercise of magisterial powers to flog convicts—another grave objection to the system; (3) the female convicts, when released, almost inevitably led a life of prostitution. A reversion to the system would probably be faced, sooner or later with just the same difficulties. Our second comment is this. Curiously enough, 'transportation' was not originally intended as a legal punishment at all. It was introduced as a 'conditional pardon' to a convict sentenced to death (Kelyng, folio 45; Kenny, p. 482, note). Such pardons were introduced shortly before 1665, and were given to convicts on the condition that they should remain in a specified colony for seven years, five of which should be passed in service to a person named by the Governor, and at the end of the term a grant of land was made. This method of forced colonisation would be out of place in present day conditions, and one of the main grounds for transportation therefore fails.—*Ibid.*

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The Judges and the Mansion House.—The Lord Chancellor, in responding to the toast, said that the hospitality of the Mansion House, which was not only traditional but historical,

did not overlook serious people like the judges. He was glad to learn that the Lord Mayor would in a few weeks mitigate the rigour of that occasion by entertaining the bishop. (Laughter.) The connection between the City and the judges had indeed been a close one. When he thought of that long story of the relations between the lawyers and the City of London, of the conflicts over the charter and the liberties of the City, over the battles they fought for their rights—battles in which the judges, without fear and without favour, stood between them and the Executive—a long list of names came before him. He went back in memory to Sir Thomas More and Francis Bacon, to Ellenborough, Camden, and Somers, to the illustrious men of the eighteenth century, to Hardwicke, the greatest Equity lawyer who ever sat on the Bench, to the rugged Thurlow, the one man whose personality made Dr. Johnson express the fear of meeting him in conversation, to a relative of his own (for he was not the first of his family to be Lord Chancellor), John Scott, Lord Eldon, whose politics were not sufficiently progressive for the City—a defect which he hoped he himself had repaired—(laughter)—to Lyndhurst and Brougham, of whom it was unjustly said that if he had only known a little law he would have known something of everything—(laughter)—to Westbury, with his lambent wit and mordant tongue, to Cairns, that great master of jurisprudence and oratory, who could make the facts speak the law, to Selborne, with his unrivalled gift of accuracy and knowledge and his high character, and then to one still living, and at whose feet they, his brother judges, were proud to sit and learn—Lord Halsbury. (Cheers.) The training of the judge in this country was very different from the training of the judge in other countries. In other countries he belonged to a profession by itself. With us he was trained at the Bar and in the school of affairs, often in that most remarkable college in which he spent twenty-five years of his own life—the House of Commons. They might say what they liked about the House of Commons. They might say that it had degenerated, but it remained what it was—the finest school of affairs and the greatest representative institution the world contained. (Cheers.) One learnt there many things it was impossible to learn elsewhere. The judges had a training which brought them into contact with the concrete realities of life in a way which was not easy where the training was different. They learned by their very contact with public affairs to eliminate politics. Recently he sat with three colleagues, two from the opposite political party, to hear a question as to whether a member of Parliament had forfeited his

seat. He could only say that a more perfect tribunal he had never experienced, and he thought that they all forgot there was such a thing as politics, or anything in the world but law to be considered, and he was not sure that their contact with politics had been a bad thing either for justice or the nation. The Lord Mayor had spoken of the two measures which had been before Parliament for the appointment of an additional judge (to whose welcome that night he was glad to listen) and for enlarging the number of judges of the supreme tribunal of the Empire—measures which had got through their second reading in the House of Commons and which, he hoped, would soon become law. (Cheers.)

The Master of the Rolls, who proposed the toast of 'The Profession of the Law,' referred to the cordial relations existing between the Bench and the Bar and the solicitors, and said that if they ever came across a judge who said that he could get on as well without the Bar as with the Bar they might be quite sure that he was suffering from a strong attack of vanity. (Laughter.) The more experience he had the more convinced he became that justice could never be properly administered unless there was perfect confidence and mutual respect between the Bench, the Bar, and solicitors. (Cheers.)

The Attorney-General, in responding to the toast, said that the City had ever—at least, as long as there had been judges—honoured the Bar by including it at those gatherings. The relations between the Bar and the solicitors, speaking as a whole, were excellent, although there were some members of the Bar who would desire, if they had their way, that those relations should be a little more frequent. (Laughter.) He thought that solicitors were more necessary to the Bar than the Bar to the Bench. With regard to the proposals which had been before Parliament, one had already proved effective in the appointment of Mr. Justice Atkin—(cheers)—while the other had, perhaps, a little more tempestuous crossing to make. The one thing the people of this country had come to realize—in which the public conscience was quickened—was that law to be justice must be speedy and prompt. (Cheers.) Now-a-days all the people knew was that it was a denial of justice if there was delay of justice, and consequently they had recognised in Parliament the necessity for the additional judge, and, more important still, the appointment of two additional Lords of Appeal. The Lord Chancellor had as much as any human being could bear upon his shoulders, and if with the help which two additional Law Lords would afford they would lighten his labours by finding sufficient Law

Lords to constitute his Court they would have done good work indeed. (Cheers.) He was certain that one of the greatest and strongest of the connecting links between the various Dominions of the Empire was the fact that there was the appeal to the Sovereign in Council. The Dominions turned with confidence to that supreme tribunal, many thousands of miles away as it was, because they knew that justice was impartially and most capably administered. (Loud cheers.) Alluding to the presence of M. Labori as a fellow guest, the Attorney-General remarked that in the part he had played in the history of the French Bar he had shown what courage and tenacity could achieve, and had raised and glorified the profession of the law not only in his own country but throughout the whole of the civilized world. (Cheers.)

CONTEMPORARY LEGAL LITERATURE.

In the *Law Magazine & Review*, for May, Mr. C. A. H. Bartlett gives an account of the *French Judicial system* (Civil). French judicial practice presents many fundamental points of difference from the English. In the French system, for instance, the elaborate rules as to the admissibility and relevancy of evidence that form a marked feature of the English system are totally absent. All things go in without objection and the sifting comes in only when the advocate addresses the Court. And then the question is one of logical relevancy. While so liberal in one direction, the French system is very narrow in another. Self-interest is still a disqualifying circumstance for a witness. But witnesses are rarely heard in Civil cases. Even if heard they are not sworn. Official surveillance is so complete that documentary evidence is always available. Unlike here, the Judge conducts the examination of the witnesses; the advocate can only suggest questions which it is left to the judge to put or not Cross-examination by counsel is not allowed.

The principle of *Stare decisis* or precedent is not accepted in France. On each question, there have arisen multitudes of theories or systems as they are called which the judges choose between as their inclination leads them. The individuality of the judges is not disclosed in the judgment which is of the Court.

There are two classes of legal practitioners in France, the avocats (corresponding to barristers) and the avoues (corresponding to solicitors). Among the avocats there is a select body which has the exclusive privilege of appearing before the Cour De Cassation, the highest tribunal in the land.

Coming to the tribunals, there is first the Cour De Cassation which is the Court of final resort. Appeals lie to it only on questions of law and its decision is final. One of the most important courts in France is the Counseil 'D Etat or the Council of State of which the Minister of Justice is the presiding officer. It is the court which finally decides controversial questions or disputes arising in administrative departments or involving the power or jurisdiction of an administrative officer. It has exclusive jurisdiction in matters coming under the law of eminent domain and in all land acquisition proceedings. For settling conflicts between the Judicial and administrative departments, the French system provides a special tribunal called. *Tribunal Des Conflits.* Intermediate between the *Cour de cassation,* and the *Tribunal De Premiere Instance* (Court of first instance) there is the Cours d'appeal (the court of appeal). The *Tribunal De Premiere Instance* is the ordinary Civil Court. There are four other courts to be noticed. Commercial disputes are settled by a special tribunal called *Tribunal De Commerce* composed of business men, not lawyers as judges. This tribunal is noted for its promptness. The judges of this court are elected. Disputes between employers and employees are settled by another Special tribunal *Conseil Des Prudshomes* which also consists of only business men. This court is so constituted as to avoid the possibility of a dispute being judged except by a representative body composed of an equal number of partisans affiliated in position and occupation with each of the parties. *Conseil De Prefecture* is another Court of special jurisdiction. The last but by no means the most insignificant court is that of the Justice De Paix, (Justice of the Peace) whose jurisdiction extends ordinarily up to 600 francs, in exceptional cases to 1500 francs. His decision is final where the subject matter is of less value than 300 Francs.

In another article in the same journal, Mr. R. L. Marshall traces the evolution of *Freedom of Contract,* under the English Law by which from the position where only certain kinds of contracts were recognised as in Edward I's time, we have come to the present when validity of contract is the rule, its invalidity the exception. This development is largely due to actions on contract being in their origin, in most part, actions of trespass on the case. Just as there is no limit to the possible kinds of trespass for which an action is available at law, there is no limit to the conceivable instances of broken contract for which damages may be claimed. According to the writer, the doctrine of con-

sideration is not and was never the essence of contract. It was more or less of a buttress to support it. The source of obligation is the promise of one and the agreement of both. As late as 1765, Lord Mansfield held that agreements in writing, at all events in commercial affairs were valid without any consideration at all. The present law requiring consideration to support a promise is highly composite. There is the artificial common-law rule itself borrowed from equity that there must be (present or future) consideration, there is the equally artificial common law exception to the rule *viz.*, that in favour of past consideration laid down in the cases of *Lampleigh v. Braithwait* and *Bradford v. Roulston.* There is also the old canonical rule traceable to the middle ages which regards consideration as having a merely evidentiary value. This is supported of course only to a very limited extent, by the modern authorities on *Lampleigh v. Braithwait* and *Bradford v. Roulston.* For instance, in *Stewart v. Casey*, Lord Justice Bowen says " even if it were true as some scientific students of law believe that a past service cannot support a future promise, you must look at the document and see if the document cannot receive a proper effect in some other way. Now the fact of past service raises an implication that at the time it was rendered, it was to be paid for and if it was a service which was to be paid for, when you get in the subsequent document a promise to pay, that promise may be treated either as an admission which evidences or as a positive bargain which fixes, the amount of that reasonable remuneration, in the faith of which the service was originally rendered.

In an article on "*Positive Right*" Mr. George Del Vechio justifies the antithesis between " positive right" and " natural right" recognised by a certain class of writers. " Positive right" is according to the writer what is considered as binding rules of conduct at any particular time while the criterion of justice to which these rules are constantly referred to apart from any historical sanction, is " natural right." This criterion persists in the human conscience and is one and uniform in its principles.

In the *Harvard Law Review* for April, a learned writer makes certain suggestions to the legislature to remedy the grave situation which is arising by the existence of " *interlocking directorates*" i. e. by several corporations having one or more directors common. The Law as it is, though strict, is not sufficiently so as it avoids contracts only if the directors concerned take actual part in the passing of contracts and does not take note of their presence at the meeting and the exercise of their influence by being so

present. One of the suggestions of the writer is that no two companies should have common directors.

In the *American Law Review* for March and April, Mr. R. Gwynne elaborates the theory that consideration is only a token evidencing the intention to be bound and that intent to incur obligation taken in connection with motive constitutes the mainspring of contract. In the absence of a valid motive, he argues, a promise to pay a large sum in consideration of a trivial sum would be bad, though it cannot be said there is no consideration for the promise.

Another learned writer suggests a law should be made so that persons that attempt to commit suicide may for sometime be kept in detention. That is because except in two states which have recently made attempts to commit suicide a crime, there is no aw punishing such attempts. The writer deprecates treating suicide as a crime; he would have detention as a preventive measure against the man attempting again.

BOOK REVIEWS.

The Indian Decisions Old Series.—Vols. 3, 4 and 6 to 8 published by the Law Printing House, Mount Road. Price of each Rs. 7.

These volumes contain the reprints of reports specially useful for the legal profession. The 3rd volume contains among others the reports of cases decided by the Supreme Court of Bengal and published in Boulnois reports and Sir Edward Hydes East's notes of cases. The 4th volume contains reports of cases decided by the Supreme Court of Bombay and published in Perry's Oriental cases a rather rare book. Volumes 6 to 8 contain reports of cases decided by the Sudder Dewanny Adawlut and published in the Select Reports by Macnaghten. The Sudder decisions of Bengal will also be published and the 8th volume contains the reports published in the 1st volume of the Sudder Dewanny Adawlut. It will be remembered that in many of these reports very often the same cases will be reported and the Editor should be careful to see that the same is not published twice. This will be specially so in the volumes containing the reports of the Sudder Decisions, Bengal and the Editor in the Eighth volume has been careful in this matter and in reporting the decisions from Vol. I he has merely referred to the page wherever they have already been reported in the Select Reports of Macnaghten's. In the 4th volume if a similar plan had been adopted some decisions reported twice might have been avoided but however we are glad to find the plan adopted in the subsequent

volumes where such adoption is very necessary. The publication of the decisions by the Editors is very useful to the profession and the present volumes show the care and energy bestowed by the Editors in editing these publications and making them especially useful to those for whom they are intended. We have no hesitation in commending the volumes to the profession.

Indian Decisions (*New series*) by T. A. Venkasamy Rao and T. S. Krishnasamy Rao, the Law Printing House, Madras.

The present series with the Indian Reports and the Indian decisions (New series) purport to give a reprint of the decisions of all the superior tribunals in this country including the Privy Council. As at the time of commencing the series the publishers had not the sanction of the Government of India to reprint the I. L. R. they could not use the headnotes, or facts or adopt the arrangement in the I. L. R. As a result in the first 5 vols. we have the reports published in the order of dates with the publishers' own headnotes and statement of facts. The method of publishing in the order of dates however valuable to a pure student of law would have caused a certain amount of inconvenience to the busy practitioner. Now that the Government's sanction has been obtained from the sixth volume upwards the series will be printed verbatim in the order of the I. L. R. headnotes, facts and all. The publishers promise to give subscribers of the series from its commencement reprints (according to the new plan) of the official reports contained in the first 5 volumes. The series as at present published are bound to be very popular. While about a third as cheap as the original reports they are quite as handy. Whether the volumes will be as handy when the 3 vols. of the Calcutta series will have to be printed in one volume remains to be seen but the enterprise of the publishers we have no doubt will find a way for it. Whenever a case reported in the series is reported also elsewhere, reference to non-official reports is given at the top thus saving a lot of labour to the practitioner.

By giving references to cases where a particular case is followed, distinguished, overruled, or dissented from, these reports in a measure serve as a digest and will be particularly welcome to the profession. The get up like all Lawyer's Companion publications is good and leaves nothing to be desired.

The All India Digest 1811—1911 Civil Vols. V and VI published by the Law Printing House, Mount Road, Madras, 1913. Price Rs. 8 each.

These are a continuation of the All India Digest published by the Law Printing House. The fifth volume contains the headings from Idol to Limitation. The sixth volume contains the headings from the Limitation Act to Muktearnamah. We must point out however that the Editors should be careful where a case is digested from a particular report to note the other reports in which the same case is to be found. The object of the Editors is to digest the reports of all cases decided by the four High Courts and reported both in the official reports and non-official journals but also of all cases decided by other Courts and reported in the official and non-official reports and such a reference would be found very convenient and will help the legal practitioner in finding out the cases wanted by him. We may also point out that when a case decides different points as where it decides questions bearing under different headings and articles under Limitation Act it would have been useful to refer the same case to the different articles and headings also. The heading and sub-headings have been conveniently arranged and every effort has been made to make the digest useful to the Legal profession. The volumes maintain the reputation of their predecessors and we have no doubt that they will be found useful by the practitioners in this country.

Aids to Law Series: The law of Obligations in British India, by S. Venkatachariar, B.A., M.L., Advocate, High Court, Madras, published by P. R. Rama Iyar & Co. This publication aims at directing the attention of students to salient points in the sections of the chief enactments bearing on the law of obligations in British India. The plan adopted is to give the text in the body with brief notes at the foot. Decided cases are copiously cited wherever they explain or illustrate the meaning of the sections but never so copiously as to obscure the text. The divergence between the English and the Indian Law is invariably noted. The failing of students generally is to overlook the text while labouring at the commentary. The merit of this publication consists in shewing the two in their proper relation. Students are likely to find the publication very useful. As the references are up to date and can be taken in at a glance, it may not be without use to the practitioner as well.